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THE THIRD PART OF THE INSTITUTES

Of the Laws of *England*:

CONCERNING

High Treason, and other Pleas of the Crown, and Criminall causes.

ECCLES. 8. 11.

Quia non profertur cito contra malos sententia, absque timore ullo filii hominum perpetrant mala.

Inertis est nescire quod sibi licear.

Authore Edw. Coke *Milite, I. C.*

Hac ego grandævus possui tibi, candide, cellor.

MDCXLVIII.

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1148



A

TABLE OF THE SEVERALL Chapters of the Third part of the Inſtitutes, of the Pleas of the Crown.

Multi multa, nemo omnia novit.

Cap.		Pag.
1	HIgh Treaſon, and of incidents thereunto.	1
2	Petit treaſon.	19
3	Miſpriſion of treaſon.	36
4	Felony by the ſtatute of 3 H. 7. to conſpire the death of the King, or Privy Counſellor.	37
5	Hereſie.	39
6	Of Felony by Conjuration, Witchcraft, Sorcery and Inchantment.	44
7	Murder.	47
8	Homicide, and herein of Felo de ſe.	54
9	Deodands.	57
10	Buggery or Sodomy.	58
11	Rape.	60
12	Felony for carrying away a woman againſt her will.	61
13	Felony for cutting out of tongues, &c.	62
14	Burglary, and herein of Sacriledge.	63
15	Burning of houſes.	66
16	Robbe-	

16 *Robbery.* 68
17 *In what caſes breakers of priſons are felons.* 69
18 *Eſcape voluntary of Felons.* 70
19 *Stealing, &c. of Records.* *ibid.*
20 *Multiplication.* 74
21 *Hunting in the night.* 75
22 *Imbeſilling of Armour, Ordnance, Victuals, &c.* 78
23 *To depart the Realm to ſerve forain Princes, &c.* 80
24 *Purveyors.* 82
25 *Wandring ſouldiers, and mariners.* 85
26 *Souldiers that depart from their Captains, &c.* 86
27 *Marrying of two huſbands, or two wives.* 88
28 *A plague ſore, &c.* 90
29 *Felony in a Gaoler by dures, &c.* 91
30 *Felony by bringing in, &c. of certain money.* 92
31 *Tranſportation of moneys.* *ibid.*
32 *Tranſportation of Wool, Woolfels, lead, &c.* 95
33 *Tranſportation of iron, braſſe, copper, &c.* 97
34 *Felony for ſtealing of Falcons, &c.* *ibid.*
35 *Congregations of Maſons, &c.* 99
36 *Bringing in of Buls.* 100
37 *Receiving of Ieſuites, &c.* 101
38 *Felony in Recuſants concerning Abjuration.* 102

Cap. The Table. Pag.
39 *Egyptians.* *ibid.*
40 *Rogues.* 103
41 *Forgery in the ſecond degree.* *ibid.*
42 *Tranſportation of ſheep alive in the ſecond degree.* 104
43 *Servants that imbeſill their maſters goods after their death, &c.* *ibid.*
44 *Servants that imbeſill their maſters goods committed to their truſt, above 40 s.* 105
45 *Powdike in Marſland.* 106
46 *Diſcovery of counſell by a Juror, &c.* *ibid.*
47 *Larceny and Theft.* 107
48 *The year day and waſt.* 111
49 *Piracy, &c. upon the Sea.* *ibid.*
50 *Clergy.* 114
51 *Abjuration and Sanctuary.* 115
52 *Hue, and Cry.* 116
53 *Mayhem.* 118
54 *Premunire.* 119
55 *Propheſies.* 128
56 *Approver.* 129
57 *Appeals.* 131
58 *Treaſure trove.* 132
59 *Wreck.* 133
60 *Falſe tokens, &c.* *ibid.*
61 *Thefbote.* 134
62 *Indictments.* *ibid.*
63 *Councell in Pleas of the Crown.* 137

64 *Prin-*

64 *Principall and Accessory.* 138
65 *Misprision divers and severall.* 139
66 *Conspiracy.* 143
67 *Pensions, &c. received of forain Kings.* 144
68 *Bribery.* 145
69 *Extortion.* 149
70 *Vsury.* 151
71 *Simony.* 153
72 *Single combat, Duell, &c.* 157
73 *Going or riding armed.* 160
74 *Perjury and subornation, and incidently of oaths, and of commissions, &c. and of equivocation.* 163
75 *Forgery, the first offence.* 168
76 *Libels, and Libellers.* 174
77 *Champerty, imbracery, maintenance, &c.* 175
78 *Barrettry.* *ibid.*
79 *Riots, routs.* 176
80 *Quarrelling, &c. in Church, &c.* *ibid.*
81 *Smiting or laying violent hands in Church, &c.* 177
82 *Striking or drawing weapon in Church, &c.* *ibid.*
83 *Striking, &c. in any of the Kings Courts of Iustice, &c. or in any of the Kings houses.* *ibid.*
84 *Fugitives, &c. or such as depart the realm without licence, &c.* 178
85 *Monopolists, Projectors, Propounders, &c.* 181
86 *Dispensers with penall statutes.* 186
87 *Concealers, &c.* 188

88 *Informers, relators, &c.* 191
89 *Foreſtallers, Ingroſſers, &c.* 195
90 *Roberdſmen.* 197
91 *Bankrupts.* 198
92 *Recuſants.* *ibid.*
93 *News, rumors.* *ibid.*
94 *Weights and meaſures.* *ibid.*
95 *Apparell.* 199
96 *Diet.* 200
97 *Buildings.* 201
98 *De Lupanaribus, &c. Brothel-houſes.* 205
99 *De Aſſentatore, flatterer.* 207
100 *Falſe impriſonment.* 209
101 *Judgements and Execution.* 210

In caſe of High treaſon. *ibid.*
In Petit treaſon. 211
In Appeal when the Defendant joyning in Battail is vanquiſhed, or ſlain. 212
In Treaſon or Felony wherein neither corporall puniſhment, nor forfeiture is expreſſed. *ibid.*
Auterfoits attaint. *ibid.*
Auterfoits acquit. 213
Auterfoits convict devant Iudgement. 214
Iudgement to reverſe an Outlawry for Treaſon or Felony. *ibid.*
Iudgement in caſe of Abjuration, &c. 216
Peyne fort & dure. 217
Iudgement in Petit larceny. 218
In miſpriſion of High treaſon. *ibid.*
For ſtriking in Weſtminſter hall, &c. *ibid.*
For ſtriking and drawing blood in the Kings Court. *ibid.*
In a Premunire at the ſuit of the King. *ibid.*
In caſe of Theftbote. *ibid.*
Pillory, Tumbrell, Cucking ſtooll. 219

Judgement for death of a man per infortunium. 220
For the death of a man, se defendendo. *ibid.*
For death of a man that offereth to rob, &c. *ibid.*
In Conspiracy, where the party indicted, &c. is legitimo modo acquietatus. 222
In an Attaint. *ibid.*
Judgement de corrupto Judice. 223

102 *Forfeiture, confiscation, &c.* 227

103 *Seisure of goods for offences before forfeiture, and begging of lands or goods before conviction, unlawfull.* 228

104 *Falsifying of Attainders.* 230

105 *Pardons.* } *Works of mercy.* 233
106 *Restitutions.* } 240

The Epilogue.

DEO,

PATRIÆ,

TIBI.

A Proeme to the third part of the Inſtitutes.

IN the ſecond part of the *Inſtitutes* we have ſpoken onely of Acts of Parliament, *(viz.)* of *Magna Carta*, and many ancient and other Acts of Parliament, which we have explained, and therein obſerved which of them are declaratory of the ancient Laws of this Realm, which are introductory of new, and which mixt: All of them (excepting a very few) concerning *Common Pleas*, and theſe two great Pronouns, *Meum* and *Tuum*.

In this Third part of the *Inſtitutes*, we are to treat *De malo*, viz. of *High Treaſon*, and other *Pleas of the Crown*, and Criminall Cauſes, moſt of them by Act of Parliament, and ſome by the Common Law: in which Caſes the Law of all other is moſt neceſſary to be known, becauſe it concerneth the ſafety of his Majeſty, the quiet of the Commonwealth, and the life, honour, fame, liberty, blood, wife, and poſterity of the party accuſed, beſides the forfeiture of his lands, goods, and all that he hath: for it is truly ſaid of theſe Laws, *Reliquæ leges privatorum hominum commodis proſpiciunt, hæ regiæ majeſtati, ſubditorum vitæ, ac publicæ tranquillitati conſulunt*. And that in theſe Caſes the ancient Maxime of the Law principally holdeth, *Miſera ſervitus eſt, ubi jus eſt vagum, aut incognitum*. And where ſome doth object againſt the laws of *England*, that they are dark and hard to be underſtood, we have ſpecially in theſe and other parts of the *Inſtitutes* opened ſuch windows, and made them ſo lightſome, and eaſie to be underſtood, as he that hath but the light of nature, (which *Solomon* calleth the candle of Almighty God, *Prov.* 20. 27.) adding induſtry and diligence thereunto, may eaſily diſcern the ſame. And that may be verified of theſe Laws, that *Lex eſt lux*, Prov. 6. 23. the Law it ſelf is a light. See *Rom.* 2. 14. And when we conſider how many Acts of Parliament (publiſhed in print) that have made new treaſons and other capitall offences, are either repealed by generall or expreſſe words, or expired: How many Indictments, attainders of treaſons, felonies and other crimes, which are not warrantable by law at this day: And how few Book-caſes there have been publiſhed of treaſons, (though a ſubject of greateſt importance) & thoſe very ſlenderly reported: We in reſpect of the places which we have holden, and of our own obſervation, & by often conferences with the Sages of the law in former times concerning criminall cauſes or *Pleas of the Crown*, have thought good to publiſh this Third part of the *Inſtitutes*, wherein we follow that old and ſure rule, *Quod judicandum eſt legibus, & non exemplis*. A work

See the 1. part of the Inſtitutes Sect. 500.

Malum non habet efficientem ſed deficientem cauſam. Evil hath not an efficient, but a deficient cauſe, by reaſon of the want of ſome vertue or notable good.

Stamford.

arduous, and full of ſuch difficulty, as none can either feel or beleeve, but he onely which maketh triall of it. And albeit it did often terrifie me, yet could it not in the end make me deſiſt from my purpoſe; (eſpecially in this work) ſo farre hath the love and honour of my country, to paſſe through all labours, doubts and difficulties, prevailed with me.

This, as other parts of the *Inſtitutes*, we have ſet forth in our Engliſh tongue, not onely for the reaſons in the Preface to the firſt Part of the *Inſtitutes* alledged, which we preſume may ſatisfie any indifferent and prudent reader: but ſpecially this Treatiſe of the *Pleas of the Crown*, becauſe, as it appeareth by that which hath been ſaid, it concerneth all the ſubjects of the realm more nearly by many degrees, then any of the other. Hereunto you may adde that which *Robert Holcoth* an Engliſh man ſurnamed *Theologus magnus*, upon the ſecond Chapter of the book of *Wiſdome*, in or about the 20. year of King *E.* 3. wrote to this effect. *Narrant hiſtoriæ quod cum* Willielmus *dux* Normannorum *regnum* Angliæ *conquiſiviſſet, deliberavit quomodo linguam* Saxonicam *poſsit deſtruere, &* Angliam, *&* Normanniam *in idiomate accordari, & ideo ordinavit, quod nullus in curia regia placitaret niſi in Gallico, & iterum quod puer quilibet ponendus ad literas addiſceret Gallicum, & per Gallicum Latinum, qua duo uſq; hodie obſervantur. Hæc ille.* But the ſtatute of 35 *E.* 3. c. 15. made not long after *Holcoth* wrote, hath taken theſe edicts of a Conqueror away, and given due honour to our Engliſh language, which is as copious and ſignificant, and as able to expreſſe any thing in as few and apt words, as any other native language, that is ſpoken at this day. And (to ſpeak what we think) we would derive from the Conqueror as little as we could.

Bal. cont. 3. fo. 148

35 E. 3. ca. 15.

When *Henry* the firſt died, all the iſſue male of the Conqueror, and of his ſons were dead without iſſue male.

The wife of King *H.* 1. was *Mawde* daughter of *Malcolme* King of *Scotland* ſurnamed *Canmor*, and of *Margaret* his wife, who was the granchild of *Edmond Ironſide* King of *England*, *viz.* The ſaid King *Edmond* had iſſue *Edward* ſurnamed the *Outlaw*, becauſe he lived a long time beyond ſea with *Salamon* King of *Hungary* out of the extent of the laws of this Realm. *Edward* had iſſue the ſaid *Margaret* his eldeſt daughter, famous for her piety and vertue; ſhe had iſſue *Mawde* wife of King *H.* 1. who by her had iſſue *Mawde*, of whoſe Engliſh blood by *Geffary Plantagenet* Earle of *Anjou* all the Kings of England are lineally deſcended.

We have in this Third part of the *Inſtitutes* cited our ancient Authors, and books of the Law, *viz. Bracton*, *Britton*, the *Mirror* of *Iuſtices*, *Fleta*, and many ancient records, never (that we know) before publiſhed, to this end, that ſeeing the *Pleas of the Crown* are for the moſt part grounded upon, or declared by ſtatute Laws, the ſtudious Reader may be inſtructed what the Common Law was before the making of thoſe ſtatutes, whereby he ſhall know, whether the ſtatutes were introductory of a new law, declaratory of the old, or mixt, and thereby perceive what was the reaſon and cauſe of the making of the ſame, which will greatly conduce to the true underſtanding thereof.

We ſhall firſt treat of the higheſt, and moſt hainous crime of *High Treaſon*, *Crimen læſæ Majeſtatis*, and of the reſt in order, as they are greater and more odious then others.

CAP.

CAP. I.

Of High Treaſon.

BY the Statute of 25 E. 3. De proditionibus, is declared in certain particular Caſes, what offences ſhall be taken to be Treaſon, with this reſtriction. That if any other caſe ſuppoſed to be treaſon ſhould happen before any Juſtices, the Juſtices ſhould tarry without going to judgement of the treaſon, till the caſe be ſhewed before the King and his Parliament, whether it ought to be adjudged treaſon or other felony: therefore we will lay our foundation upon, and begin with that Act of Parliament, the Letter whereof in proprio idiomate enſueth. 25 E.3.cap.2.

*AVxint pur ceo que divers opinions ount eſtre eins ceux heures qen caſe doit eſtre dit treaſon, & en quel caſe nemi, le roy a le requeſt des ſeigniours & commons ad fait declariſment que enſuiſt. Ceſtaſſavoire, quant home fait compaſſer ou imaginer la mort noſtre ſeignior le roy, madame ſa compaigne, ou de lour fitz eigne & heire. Ou ſi home violaſt la compaigne le roy, ou leigne file le roy nient marie, ou la compaigne leigne fitz & heire le roy. Ou ſi home leve guerre enconter noſtre ſeignior le roy en ſon realme, ou ſoit aidant as enemies noſtre dit ſeignior le roy en ſon realme, donnant a eux aid, ou comfort en ſon roialme, ou per aylours, & de ceo provablement ſoit attaint de overt fact per gents de lour condition. Et ſi home counterface le grand, ou privie Seale le roy, ou ſa monye. Et ſi home apport faux money en ceſt roialme counterfait al mony dangliterre, ſi come la mony appelle * Luſheburgh, ou auter ſembleble a la dit mony dangliterre, ſachant le money eſtre faux, pur merchander ou payment faire en diſceite noſtre dit ſeignior le roy & de ſon people. Et ſi home tuaſt Chancelor, Treaſurer, ou Iuſtices noſtre ſeignior le roy del un Banke ou del auter, Iuſtices in Eire & daſsiſes, & touts auters Iuſtices aſsignes de Oier & Terminer * eſteaunts en lour places en feſants lour offices. Et ſoit a entendre que les caſes ſuiſnomes doit eſtre adjudge treaſon, que ſe extent a noſtre ſeigniour le roy & ſa roiall Majeſtie: Et de tiel manner de treaſon la forfeiture des eſcheates apper tenont a noſtre ſeignior le roy, ſibien des terres & tenements tenus des auters, come de luy meſme.*

Divers opinions. *Ad fait Declariſement.* *Nota*, This is a Law for the moſt part *Declaratory*, but addeth alſo divers things to the ancient Law.

* *Luſheburghs*, alias *Luxenburghs* were a kinde of baſe Coine to the likeneſſe of our Engliſh money, ſo called, becauſe they were coined in *Luſheburgh*, which ſometime was an Earledome, and after a Dukedome. See *Chaucer* in the Prologue to the Monks Tale, the Hoſt ſpeaking to a luſty Monk, ſaith, *God wot, no Luſheburghs pay ye*, that is (upon the coherence of the Verſe) No payment make ye that is not full and currant.

* *Injuria illata judici ſeu loci tenenti regis videtur ipſi Regi illata, maxime ſi fiat in exercente officium.*

Item,

Item WHereas divers opinions have been before this time, in what Case Treason ſhall be ſaid, and in what not; the King at the requeſt of the Lords and of the Commons, hath made a Declaration in the manner as hereafter followeth: That is to ſay, When a man doth compaſſe, or imagine the death of our Lord the King, of my Lady his Queen, or of their eldeſt ſonne and Heire: or if a man doe violate the Kings Compagnion, or the Kings eldeſt daughter unmarried, or the wife of the Kings eldeſt ſonne and heire: Or if a man doe levy warre againſt our Lord the King in his Realm, or be adherent to the Kings enemies in his Realm, giving to them aide and comfort in the Realme or elſewhere, and thereof be provably attainted of open deed by people of their condition. And if a man counterfeit the Kings great, or privy Seale, or his money: and if a man bring falſe money into this Realm counterfeit to the money of England, as the money called Luſheburgh, or other like to the ſaid money of England, knowing the money to be falſe, to merchandize or make paiment, in deceipt of our ſaid Lord the King and of his people. And if a man ſlay the Chancellor, Treaſurer, or the Kings Juſtices of the one Bench, or the other, Juſtices in Eire, or Juſtices of Aſſize, and all other Juſtices aſſigned to hear and determine, being in their place doing their offices. And it is to be underſtood, that in the caſes above rehearſed, it ought to be judged Treaſon, which extend to our Lord the King and his Royall Majeſty: And of ſuch Treaſon the forfeiture of the eſcheats pertaineth to our Lord the King, as well of the lands and tenements holden of others, as of himſelf.

And albeit nothing can concern the King his Crown, and Dignity, more then Crimen læſæ Majeſtatis, High Treaſon: Yet at the requeſt of his Lords and Commons, the bleſſed King by authority of Parliament made the Declaration, as is aboveſaid: and therefore, and for other excellent lawes made at this Parliament, this was called Benedictum Parliamentum, as it well deſerved. For except it be Magna Charta, no other Act of Parliament hath had more honour given unto it by the King, Lords ſpirituall and temporall and the Commons of the Realm for the time being in full Parliament, then this Act concerning Treaſon hath had. For by the Statute of 1 H.4. cap. 10. reciting that where at a Parliament holden 21 R.2. divers pains of treaſon were ordained by Statute, in as much as there was no man did know how to behave himſelf, to doe, ſpeak, or ſay, for doubt of ſuch pains: It is enacted by the King, the Lords and Commons, that in no time to come any treaſon be judged otherwiſe, then it was ordained by this Statute of 25 E.3. The like honour is given to it by the Statute of 1 E.6. ca. 12. and by the Statute of 1 Ma. cap. 1. Seſſ. 1. different times, but all agreeing in the magnifying and extolling of this bleſſed Act of 25 E.3. Of this Act of 1 Mariæ, we ſhall ſpeak more hereafter. But to proceed to give a light touch how other Acts of Parliament have been called.

1 H.4. cap. 10.

1 E.6. cap. 12. 1 Mar. cap. 1. Seſſ. 1.

The Parliament holden at Oxford Anno 42 H.3. was called Inſanum Parliamentum. 12 E.2. the Parliament of Whitebands, Albarum Fibularum or Metellarum. 5 E.3. Parliamentum bonum. 10 R.2. Parliamentum q fecit mirabilia, that wrought wonders. 21 R.2. Magnum Parliamentum. 6 H.4. Parliamentum indoctum, Lack-learning Parliament. 4 H.6. Parliamentum Fuſtium, the Parliament of Bats. The Seſſion of Parliament in An. 14 H.8. called the Black Parliament. The Act of 1 E.6. was called Parliamentum pium, the pious Parliament. And the ſaid Act of 1 Mar. Parliamentum propitium, the mercifull Parliament. The Parliaments of Queen Elizabeth ſtiled Pia, juſta, & provida. The Parliament holden An. 21 of King James, called Fœlix Parliamentum, the happy Parliament,

ment. And the Parliament holden in the third peare of our Soveraigne Lord King Charles, Benedictum Parliamentum, the bleſſed Parliament. The ſeverall reaſons of theſe former Appellations appeare of Record and in Hiſtory, and the latter are yet freſh in memory. At the making of the Statute of 25 E. 3. the High Courts of Juſtice were furniſhed with excellent men, viz. Sir William Shardſhill Knight, (chorlie written in Books Shard) Lord Chief Juſtice of the Kings Bench, and his Compagnions Juſtices of that Court; Sir Iohn Stonor Knight, commonly written in books Stone, Lord Chief Juſtice of the Court of Common Pleas, and his Compagnions Juſtices of that Court; and Gervaſius de Wilford, Lord Chiefe Baron of the Exchequer; men famous in their profeſſion, and excellent in the knowledge of the Lawes. At the making of the Statute of 1 H. 4. were Sir Walter Clopton Knight, Lord Chiefe Juſtice of the Kings Bench, and his Compagnions Juſtices of that Court; and Sir William Thirning Knight, Lord Chiefe Juſtice of the Court of Common Pleas, and his Compagnions Juſtices of that Court; and Sir Iohn Caſſie Knight, Lord Chief Baron of the Exchequer; men equall to any of their Predeceſſors in the knowledge of the Lawes. At the making of the Statute of 1 E. 6. were Sir Richard Liſter Knight, Lord Chiefe Juſtice of the Kings Bench, and his Compagnions Juſtices of that Court; and Sir Edward Montague Knight, Lord Chief Juſtice of the Court of Common Pleas, and his Compagnions Juſtices of that Court; and Sir Roger Cholmeley Knight Lord Chiefe Baron of the Exchequer; men of that excellency, as they were worthy of the name of The Worthies of the Law. At the making of the Statute of 1 Mar. were Sir Thomas Bromley Knight, Lord Chiefe Juſtice of the Kings Bench and his Compagnions Juſtices of that Court; and Sir Richard Morgan Knight, Lord Chief Juſtice of the Court of Common Pleas, and his Compagnions Juſtices of that Court; and Sir D. Brook Knight, Lord Chief Baron of the Exchequer; men renowned for their great knowledge and judgement in their profeſſion. All theſe we have named in the honour of them, and of their Families and Poſterities, for that they in their ſeverall times were great furtherers of theſe excellent Lawes concerning Treaſon. In memoria æterna erit juſtus. And all this was done in ſeverall ages, that the faire Lillies and Roſes of the Crown might flouriſh, and not be ſtained by ſevere and ſanguinary Statutes. But let us come to the Act it ſelfe, and for the better underſtanding thereof, and of the Book Caſes, and other Records grounded upon the ſame: Let us divide this Act concerning High Treaſon into ſeverall Claſſes or Heads, and then proſecute the ſame in order.

The firſt concerneth Death,
- By compaſſing or imagining the death of the King, Queene, Prince: and declaring the ſame by ſome overt deed.
- By killing and murdering of the Chancellor, Treaſurer, Juſtices of the one Bench or other, Juſtices in Eyre, Juſtices of Aſſize, Juſtices of Oier and Terminer, &c. In their places doing their offices.

The ſecond concerneth Violation, that is, To Violate, or Carnally to know
- The Kings Conſort, or Queen.
- The Kings Eldeſt Daughter unmarried.
- The Princes Wife.

The third is Levying war againſt the King.

The

The fourth is adhering to the Kings enemies within the Realme, or without, and declaring the ſame by ſome overt act.

The fifth is counterfeiting of { The Great Seale. / The Privy Seale. / The Kings Coine.

The ſixth and laſt, by bringing into this Realm counterfeit money to the likeneſſe of the Kings Coin, &c.

So as Treaſon is Membrum diviſum, and theſe ſeverall Claſſes or Heads are Membra dividentia. And if the offence be not within one of theſe Claſſes or Heads, it is no Treaſon.

¶ Treaſon] is derived from [trahir] which is treacherouſly to betray. Trahue, Betrayed, and Trahiſon, per contractionem, Treaſon, is the betraying it ſelf.

Detegit imbelles animos, nil fortiter audens
Proditio.

Inter leges Canuti fo. 118. ca. 61. Proditiones hlaforbypice numerabantur inter ſcelera jure humano inexpiabilia. Treaſon is divided into two parts, viz. High Treaſon, Alta proditio, and into Petit Treaſon, Proditio parva. The Latin word uſed in Law is Proditio (à Prodere) and thereof cometh Proditorie, which of neceſſity muſt be uſed in every Indictment of Treaſon, and cannot be expreſſed by any other word, Periphraſis, or Circumlocution.

¶ Ad fait Declariſement.] This Law is for the moſt part Declaratory of the ancient Law, and therefore this word [Declariſement] is uſed. But yet the ſtudious Reader ſhall obſerve, that in divers Clauſes it addeth to the former Law, whereunto this word [Declariſement] will ſufficiently extend.

¶ Quant Home, &c.] This extendeth to both Sexes, Homo including both Man and Woman. This Act is generall, and therefore extendeth to ſome perſons which claimed a privilege to be exempted from Secular Juriſdiction. (For example,) [a] Adam de Orleton Biſhop of Hereford was indicted of High Treaſon for aiding the Mortimers, &c. with Men, and Armour againſt King E. 2, &c. Whereupon he was arraigned, and alledged Se abſque offenſa Dei, et Sanctæ Eccleſiæ, et abſque licentia Domini ſummi Pontificis non poſſe nec debere reſpondere in hac parte. And thereupon the Archbiſhop of Canterbury, York, and Dublin, and their Suffragans came to the Barre, claimed his privilege, and took him away; and he was ſo far from puniſhment, as he was after tranſlated to Worceſter, and after to Wincheſter. But this Statute (to clear all doubts) extendeth to all perſons, * as well Eccleſiaſticall as Temporall, and ſo hath it ever ſince been put in execution, as hereafter in divers Caſes it appeareth. See hereafter Cap. Murdre et Larceny.

A man that is non compos mentis, as ſhall be ſaid more fully hereafter in the next Section, or an Infant within the age of diſcretion is not (un home) within this Statute; for the principall end of puniſhment is, That others by his example may fear to offend, Ut pœna ad paucos, metus ad omnes perveniat: But ſuch puniſhment can be no example to Mad-men, or Infants that are not of the age of Diſcretion. And God forbid that in Caſes ſo penall, the Law ſhould not be certain; and if it be certain in caſe of Murder and Felony, a fortiori, it ought to be certain in caſe of Treaſon.

If a man commit Treaſon or Felony and confeſſeth the ſame, or be thereof otherwiſe convict, if afterward he become De non ſane memorie (qui patitur exilium mentis) he ſhall not be called to anſwer: Or if after judgement he become De non ſane memorie, he ſhall not be executed, for it cannot be an example to others.

And all Aliens that are within the Realm of England, and whoſe Sove-

raignes

* Rot. Romana. 17 E. 2. m. 6. Rot. Clauſ. 1 E. 3. part. 1. memb. 13. Artic. Cleri. 9 E. 3. cap. 15. & 16. Tr. 21 E. 3. coram Rege Rot. 173. *Privilegium ſeculare non competit ſeditioſo equitanti cum armis, &c. ſecundum leges eccleſiæ.* 25 E. 3. ſtat. 1. cap. 4. which was before this Act. Mich. 31 E. 3. coram Rege Rot. 55. Buck. Abbot de Miſſeny. See in the Chap. of Clergy in what caſes the priviledge of Clergy is taken away.

* To perſons Eccleſiaſticall, and Temporall. Bract. lib. 3. 120. 121. 134, 135. Britton. 5. 18. Fleta. cap. 23. 30. Mirror. cap. 1. §. cap. 2. §. 11. de appeale de homicide. 3 E. 3. cor. 383. 25 E. 3. 42. cor. 139. 26 aſſ. 27. 3 H. 7. cap. 1. 3 H. 7. 1. 12. 21 H. 7. 31. 1 Mar. Dier 140. Tr. 32 E. 1. Coram Rege. 15. 8 E. 2. Corone. 69. 395 Cuſtum. de Norm. ca. 7 c. fo. 94, 95. 33 H. 8. cap. 20. 1 & 2 Mar. c. 10. To Aliens.

raignes are in amity with the King of England, are within the protection of the King, and doe owe a locall obedience to the King, (are homes within this Act) and if they commit High Treaſon againſt the King, they ſhall be puniſhed as Traytors, but otherwiſe it is of an Enemy, whereof you may reade at large, Lib.7. Calvins Caſe, fo.6,&c. & 17, &c.

℄ Fait Compaſſer.] Let us ſee firſt what the compaſſing or imagining the death of a Subject was before, and at the time of the making of this Statute, [a] when Voluntas reputabatur pro facto. And [b] Bracton ſaith, that Spectatur voluntas & non exitus,& nihil intereſt utrum quis occidat,aut cauſam mortis præbeat. So as when the Law was ſo holden,he muſt cauſam mortis præbere, that is, declare the ſame by ſome open deed tending to the execution of his intent, or which might be cauſe of death, as Juſtice [c] Spigurnel reporteth a Caſe adjudged; That a mans wife went away with her Arowterer, and they [d] Compaſſed the death of the Husband,[*] as he was riding towards the Seſſions of Oier and Terminer and Gaol delivery, they aſſaulted him and ſtroke him with weapons, that he fell down as dead, whereupon they fled; the Husband recovered and made Hue and Cry, and came to the Seſſions and ſhewed all this matter to the Juſtices, and upon the Warrant of the Juſtices, they were taken, indicted, and arraigned; and all this ſpeciall matter was found by Verdict; and it was adjudged that the man ſhould be hanged, and the woman burnt. And Sir William Beresford Chief Juſtice of the Common Pleas ſaid, that before him and his Compagnions Juſtices of Oier and Terminer and Gaole-delivery, a Youth was arraigned, for that he would have ſtoln the goods of his Maſter, and came to his Maſters bed, where he lay aſleep, and with a knife attempted with all his force to have cut his throat; and thinking that he had indeed cut it,he fled, whereupon the Maſter cried out, and his Neighbours apprehended the youth, and all this matter being found by ſpeciall Verdict, in the end he was adjudged to be hanged,&c. Quia * voluntas reputabitur pro facto. So as it was not a bare compaſſing or plotting of the death of a man, either by word, or writing,but ſuch an overt deed as is aforeſaid to manifeſt the ſame. So as if a man had compaſſed the death of another, and had uttered the ſame by words or writing, yet he ſhould not have died for it,for there wanted an overt deed tending to the execution of his compaſſing. [e] But if a man had imagined to murder,or rob another,and to that intent had become Inſidiator viarum, and aſſaulted him, though he killed him not, nor took any thing from him, yet was it felony,for there was an overt deed. But in thoſe daies,in the Caſe of the King, if a man had compaſſed, or imagined the death of the King(who is the Head of the Common-wealth)and had declared his compaſſing, or imagination by words or writing, this had been High Treaſon, and a ſufficient overture by the ancient Law. And herewith agree all our ancient Books. Glanvil ſaith, Cum quis de morte Regis,&c. infamatur.&c.

Bracton in the title De criminibus læſæ majeſtatis. Ipſe accuſatus præloquutus fuit mortem regis. And Britton fol. 16. Grand treaſon eſt a compaſſer noſtre mort. and fo.39.b. Cy face lencuſor ſon appeale, &c. que il oya meſme cēi John pur parlar tiel mort,ou tiel treaſon,&c. And Fleta ſaith in his title De crimine læſæ majeſtatis, Si quis mortem regis auſu temerario machinatus fuerit, &c. quamvis voluntatem non perduxit ad effectum. And the Mirror ſaith, Crime de majeſtie eſt un peche horrible fait al roy, &c. p ceux q occirent le roy, ou compaſſant a faire. And it will delight you (in reſpect of reverend antiquity) to beare a preſident of an appeale (which then and after was in uſe) of high treaſon, en pleine pliam,&c. en temps roy Edmond en ceſtes parolx. Rocelyn icy dit vers Waligrot illonq q a tiel jour tiel anne del raigne de tiel roy, en tiel lieu vient celuy Waligrot a cēi Rocelyn, & luy trova deſtre en company, et en aide enſemblement ove Atheling, Thurkild, Ballard, et autres de faire priſoner, ou en tache pur occire nrē ſeignior le roy Edmond,ou en auter manner p coupe felonioufment, et a ceo faire fuer entreinres a ceo councel celer,& a ceo felony iſſint fornir ſolonq lour poier. By all which it is manifeſt,that compaſſing,machinating,counſelling,&c. to

℄

a See hereafter, cap.73. Where and how *Voluntas reputabatur pro facto*,by the ancient law, and the change thereof.

b Bracton, fol. 15 E.2. tit.Cor. 383.

c Note this word [*compaſſed.*]

[*] *Sed hæc voluntas non intelleſta fuit de voluntate nudis verbis, aut ſcriptis propalata, ſed mundo manifeſtata fuit per apertum factum, Id eſt, cum quis dederat operam, quantum in ipſo fuit ad occidendū, & ſic de ſimilibus.*

e *Inſidiator viarū.* See hereafter,ca.5. De Hereſie. 25 E.3.4. 27 aſſ. p.38. 4 H.4.c.2. 13 H.4.7 per Gaſcoign. But ſee 9 E.4. fo. 26. *inſidiator viarum* without taking of ſomwhat, reſolved to be no felony. V lib.11.fo.29.b. Al. Poulters Caſe. Vid. poſtea cap.16 Robbery, in fine. Glanvil.lib.14. cap.14.lib.1.c.2. Bract.lib.3.f.118. Britton fol.16. & 39 b.

Note the word *Compaſſe.* Fleta lib.1.c.21. Mir.cap 1. §.5. cap.2. §.11.

Note this word *Compaſſe.* Mirror c.2.§.11. De lappeale de Majeſtie. Rot.par.25 E.3. part 1. m.16. Vide Mic. 4 H.4. Coram Rege. Rot.22. See hereof more in the 57 Cha. of Appeales. Bracton, Britton, Fleta, &c.

to kill the King, though it hath no other declaration thereof but by words, was High-treaſon by the Common law. And ſee hereafter, verb. per overt fait, & de ceo provablement, &c.

¶ Fait compaſſer ou imaginer.] So as there muſt be a compaſſing or imagination, for an Act done per infortunium, without compaſſing, intent, or imagination, is not within this Act, as it appeareth by the expreſſe words thereof. *Regula.* Et actus non facit reum, niſi mens ſit rea. And if it be not within the words of this Act, then by force of a clauſe hereafter, viz. Et pur ceo que pluſors auters, &c. It cannot be adjudged treaſon, untill it be declared treaſon by Parliament, which is the remedy in that caſe, which the makers of the law provided in that caſe. This compaſſing, intent, or imagination, though ſecret, is to be tryed by the peers, and to be diſcovered by circumſtances precedent, concomitant, and ſubſequent, with all endeavour evermore for the ſafety of the King. This was the caſe of Sir Walter Tirrel a French Knight, who the firſt day of Auguſt Ann. 13 Williel. 2. Anno dom. 1100. being a hunting with the King in the new foreſt, was commanded by the King to ſhoot at a Hart, Exiit ergo telum volatile, & obſtante arbore in obliquum reflexum faciens, per medium cordis regem ſauciavit, qui ſubito mortuus corruit. Mat. Par. pa. 51. Holling. pa. 26. b. Mat. Weſtm. W. Malmesbury.

It appeareth alſo by the Cuſtumer of Normandy treating of treaſon, and the expoſition of the ſame, that this act was not treaſon. To calculate or ſeek to know by ſetting of a figure or witchcraft, how long the King ſhall raign or live, is no treaſon, for it is no compaſſing, or imagination of the death of the King, within this ſtatute of 25 E. 3. And this appeareth by the judgement of the Parliament in 23 Eliz. whereby this offence was made felony during the life of Queen Eliz. which before was puniſhable by fine and impriſonment. Cuſtum. de Nor. cap. 14. Vide inter Indictamenta de 17 E. 4. de Th. Burdit ar. ſed judicandum eſt legibus, & non exemplis. 23 Eliz. cap. 2.

The ancient law was, that if a mad man had killed or offered to kill the King, it was holden for treaſon; and ſo it appeareth by King Alfreds law before the Conqueſt, and in lib. 4. in Beverlyes caſe. But now by this ſtatute and by force of theſe words, Fait compaſſer ou imaginer la mort, he that is non compos mentis and totally deprived of all compaſſings, and imaginations, cannot commit High Treaſon by compaſſing or imagining the death of the King: for furioſus ſolo furore punitur: but it muſt be an abſolute madneſſe, and a totall depriv'ation of memory. And this appeareth by the ſtatute of 33 H. 8. for thereby it is provided, that if a man being Compos mentis commit High Treaſon, and after accuſation, &c. fall to madneſſe, that he might be tried in his abſence, &c. and ſuffer death, as if he were of perfect memory: for by this ſtatute of 25 E. 3. a mad man could not commit High Treaſon. It was further provided by the ſaid Act of 33 H. 8. that if a man attainted of treaſon became mad, that notwithſtanding he ſhould be executed; * which cruell and inhumane law lived not long, but was repealed, for in that point alſo it was againſt the common law, becauſe by intendment of law the execution of the offender is for example, ut pœna ad paucos, metus ad omnes perveniat, as before is ſaid: but ſo it is not when a mad man is executed, but ſhould be a miſerable ſpectacle, both againſt law, and of extream inhumanity and cruelty, and can be no example to others. * Inter leges Alveredi. cap. 4. Lib. 4. fo. 124. Beverlies caſe. Ovid. *Silicet in ſuperis etiam fortuna luenda eſt: Nec veniam læſo numine caſus habet.* 33 H. 8. cap. 20. * 1 & 2 Ph. & Mar. ca. 10.

¶ Mort.] [a] He that declareth by overt act to depoſe the King, is a ſufficient overt act to prove, that he compaſſeth and imagineth the death of the King. And ſo it is to [b] impriſon the King, or to take the King into his power, and manifeſt the ſame by ſome overt act, this is alſo a ſufficient overt act for the intent aforeſaid. But peruſe adviſedly the ſtatutes of 13 Eliz. cap. 1, 2. & 14 Eliz. cap. 1. [a] Bract. li. 3. fo. 118. Britton cap. 8. a diſheriter. Glanv. lib. 1. ca. 2. Fleta li. 1. ca. 21. Mirror ca. 1. §. 5. *Vers Roy de la tre.* [a] 13 Eliz. cap. 1. *nota declared.* Brook tit. treaſon 24. [b] 1 H. 4. 1. 19 H. 6. 47. 13 H. 8. 12. *vide infra verb.* ¶ *Per overt fait.*

¶ Nre ſeignior le Roy.] Theſe words extend to all his ſucceſſors, as it hath been alwayes taken.

¶ Le Roy] Is to be underſtood of a King regnant, and not of one that hath but the name of a King, or a nominative King, as it was reſolved in the caſe 3 Mar. Dier. 131. pl. 7.

of

of King Philip, who married Queen Mary, and was but a nominative King, for Queen Mary had the office and dignity of a King, ſo as ſhe that wanted the name of a King, but had the office and dignity, was within this Act of 25 E. 3. And he that had the name, and not the office and dignity of the King, was not within it. And therefore an Act was made, that to compaſſe or imagine the death of King Philip, &c. during his marriage with the Queen, was treaſon. A Queen regnant is within theſe words, [nre ſeignior le Roy] for ſhe hath the office of a King. 1 & 2 Ph. & Mar. cap. 10.

This Act is to be underſtood of a King in poſſeſſion of the Crown, and Kingdome: for if there be a King regnant in poſſeſſion, although he be Rex de facto, & non de jure, yet is he ſeignior le Roy within the Purview of this Statute. And the other that hath right, and is out of poſſeſſion, is not within this Act. May if treaſon be committed againſt a King de facto, & non de jure, and after the King de jure commeth to the Crown, he ſhall punish the treaſon done to the King de facto: And a pardon granted by a King de jure, that is not alſo de facto, is voyd. *Vide* 11 H. 7. c. 1. 4 E. 4. 1. 9 E. 4. 1, 2.

If the Crown deſcend to the rightfull heire, he is Rex before Coronation: for by the Law of England there is no interregnum: and Coronation is but an ornament or ſolemnity of honour. And ſo it was reſolved by all the Judges Hil. 1 Ja. in the caſe of Watſon and Clark Seminary Prieſts: for by the law there is always a King, in whoſe name the laws are to be maintained, and executed, otherwiſe Juſtice ſhould fail. Divers Kings before the Conqueſt voluntarily renounced their Kingly office: And ſo did King H. 2. in the 16. year of his reign, and Henry his ſon was created and crowned. Hil. 1 Ja. in the caſe of Watſon and Clark ſeminary prieſts. 9 E. 4. 1. b.

It appeareth by Britton, that to compaſſe the death of the father of the King, is treaſon, and ſo was the law holden long after that: For after King E. 2. had diſmiſſed himſelf of his kingly office, and duty, and his ſon by the name of E. 3. was crowned, and king regnant, thoſe curſed Caitifs, Thomas Gourney, and William Ocle, and others were attainted of High Treaſon for murthering the Kings father, who had been King by the name of E. 2. and had judgement to be drawn, hanged, and quartered. See the preamble, *Auxint pur ceo que diverſ opinions ount eſtu entre ceux heures, que cen caſe doit eſtre dit treaſon, & en quel caſe nemy.* Rot. parliam. 4 E. 3. num. 5. * Eodem Rot. num. 3. & 4.

* The like judgement was given againſt Sir John Matrevers Knight, and others, as being guilty of the death of the Kings uncle, Edmond Earl of Kent, which at that time (being ſo near of the blood royall) was by ſome holden alſo treaſon. But now this Act of 25 E. 3. hath reſtrained High treaſon in caſe of death al nre ſeignior le Roy, ſa compaigne, & al eigne fitz, & heire le Roy.

Nicholas de Segrave was charged in open Parliament in præſentia dñi Reg. comitum, baronum, & aliorum de conſilio Regis tunc ibi exiſtent', that the King in the warre of Scotland being amongſt his enemies, Nicholas Segrave his liege man, and holding of the King by homage, and fealty, ſerved him for his aid in that warre, did maliciouſly move contention and diſcord without cauſe, with John de Crombewell, charging him with many enormious crimes, and offered to prove it upon his body. To whom the ſaid John anſwered, that he would anſwer him in the Kings Court, as the Court ſhould conſider, &c. and thereupon gave him his faith. After Nich. withdrew himſelf from the Kings Hoſt, and from the Kings aid, leaving the King amongſt his enemies, in periculo hoſtium ſuorum, and adjourned the ſaid Iohn to defend himſelf in the court of the King of France, and preſixed him a certain day. Et ſic quantum in eo fuit, ſubjiciens, & ſubmittens dominium regis, & regni ſubjectioni dñi regis Franciæ, ad hoc faciendum, iter ſuum arripuit uſque Dovoriam, ad transfretandum, &c. All which the ſaid Nich. confeſſed, & voluntati dñi regis de alto & baſſo inde ſe ſubmiſit. Et ſuper hoc dñs Rex volens habere aviſamentum Comitum, Baronum, Magnatum, et aliorum de conſilio ſuo, injunxit eiſdem in homagio, fidelitate, et ligeantia quibus ei tenentur, quod ipſum fideliter conſulerent, qualis pœna pro tali facto ſic cognito fuerit infligenda: qui omnes, habito ſuper hoc diligenti tractatu, et aviſamento, conſideratis, et intellectis omnibus in prædicto facto contentis, &c. dicunt quod hujuſmodi factum meretur amiſſionem vitæ et membrorum, &c. So as this offence was then ſolemnely in Parliament adjudged High treaſon. But this is Plac. in Parliam. E 1. *anno regni ſui* 31. North. Rot. 17. & 21.

taken away by this Act of 25 E. 3. being not under any of the claſſes, or heads ſpecified in this Act.

40 Aſſ. 25. So piracy by any of the Kings ſubjects upon another, was taken to be treaſon before this Act, for ſo is the book to be intended, becauſe a pirat is Hoſtis humani generis. But by this Act it is not now to be judged treaſon. See hereafter in the chapter of Piracy.

One doth marry a Queen regnant, if the husband compaſſe the death of the Queen, and declare the ſame by overt act, he is guilty of treaſon, and puniſhable by this act, for to this and many other purpoſes ſhe is a diſtinct perſon by the common law. And ſo if a Queen wife of a King regnant, compaſſe the death of the King, and declare the ſame by overt act, ſhe is guilty of treaſon, and puniſhable by this act. So as (that we may ſpeak it once for all) by theſe and many others that might be cited, (ſome whereof ſhall hereafter be touched) the preamble of this act appeareth to be true, that divers opinions had been before the making of this act, what offences ſhould be adjudged High treaſon, and what not.

Britton cap. 8. and other ancient Authors *ubi ſupra.*

This ſtatute having reſtrained the compaſſing, &c. of death to the King, Queen, and Prince, it came to paſſe after the making of this act, that in 3 R. 2. two Citizens of London, John Kerby Mercer, and John Algore Grocer, conceiving malice againſt John Imperiall Janevois of S. Mary in Genoa that came as Ambaſſadour from the ſtate of Genoa to the King, (under the Kings Letters of ſafe conduct, for alliance to be had between the King and the Duke and Communalty of Genoa aforeſaid) for that the ſaid Iohn Imperiall had obtained a * monopoly to furniſh this land (keeping his ſtaple at Southampton) of all ſuch wares as came from the Levant, ſo plentifully as was to be had in all the weſt parts of Chriſtendome, the ſaid John Imperiall was killed by them, as more at large appears by the record. And albeit the ſaid John Imperiall was an Ambaſſadour under the Kings ſafe conduct, and the killing of him was juſti belli cauſa, yet the killing of him was no treaſon, becauſe it was not under any of the ſaid claſſes or heads, untill it was at that time declared by parliament in theſe words, Quel caſe examine & diſpute inter les ſeigniors, & commons, & puis mre al Roy en pleine parliament, eſtoit illonques devant nre ſeignior le Roy declares, determinus, & aſſentus, que tiel fait, & coupe eſt treaſon, & crime de royall majeſtie blemye, en quel caſe il ne doit allower a nulluy priviledge del clergie, and accordingly the ſaid Kerby and Algore were attainted of High treaſon in the Kings bench, Hil. 3 R. 2. ubi ſupra: but this declaration is taken away by the ſtatute of 1 Mariæ, as hereafter ſhall be ſaid, and yet of this declaration we ſhall make much uſe hereafter.

Rot. parlia. 3 R. 2. num. 18. See placita coram rege Hill. an. 3 R. 2. (Cavendiſh) rot. 8. London Holl. chron. 3 R. 2. pa. 422. 60. b. &c.

* Monopoly.

nota his end.

2 Regum cap. 10. 4. 11. 31.

The killing of a forein Ambaſſadour.

Honor legati, honor mittentis eſt. & proregis dedecus redundat in regem.

In the 22 yeare of E. 3. which was about 3 years before the making of this act, one John at Hill had murdered A. de Walton the Kings Ambaſſadour, nuncium dñi regis miſſ. ad mandatum regis exequendum: this was adjudged High treaſon, for which he was drawn, hanged, and beheaded, &c. For true it is, quod legatus ejus vice fungitur, à quo deſtinatur, & honorandus eſt ſicut ille cujus vicem gerit, & legatos violare contra jus gentium eſt. But by this Act of 25 E. 3. it is reſtrained to the death de nre ſeignior le Roy, and therefore prorex is not within this ſtatute.

22 Aſſ. p. 49. *Mort dun Ambaſſad. le roy.*

¶ Sa compaigne] This word compaigne, (which is all one with conſort or wife) was uſed, that compaſſing, &c. muſt be during the marriage with the King, for after the Kings death ſhe is not ſa compaigne, and therefore it extendeth not to a Queen dowager, and for this cauſe this word compaigne was uſed in this Act.

¶ Le fitz eigne & heire le Roy.] The eldeſt ſon and heir of a Queen Regnant is within this Law. Before this Statute ſome did hold, that to compaſſe the death of any of the Kings children, was Treaſon. But by this Act it is reſtrained to the Prince, the Kings Sonne, being heire apparant to the Crown for the time being: and he need not be the firſt begotten ſonne, for the ſecond after the deceaſe of the firſt begotten without iſſue, is Fitz eigne within this

Britton *ubi ſupra.*

this ſtatute, & ſic de cæteris. If the heire apparant to the Crown be a collaterall heire apparant, he is not within this ſtatute, untill it be declared by Parliament, as it was in the Duke of Yorks caſe.

Roger Mortimer Earle of March was in Anno Domini 1487 (11 R. 2.) proclaimed heire apparant. Anno 39 H. 6. Richard Duke of York was likewiſe proclaimed heire apparant. And ſo was John de la Poole Earle of Lincolne, by R. 3. And Henry Marquiſſe of Exeter, by King Henry the eighth. But none of theſe or of the like, are within the Purview of this ſtatute. And now that we have handled compaſſings and imaginations, let us proceed to the reſidue which concern Acts and Deeds.

[c] Heire is here taken for heir apparant, for he cannot be heir in the life of the Father.

¶ Si home violaſt la compaigne le Roy.] The Mirror ſaith, Crime de Majeſtie vers le Roy p ceux Avowterors q̄ ſpergiſſent la feme le Roy. Whereby it appeareth that this was High Treaſon by the Common Law. Mirror ca. 1. § 5. Brit. c. 23. fo. 43. a.

Violare is here taken for carnaliter cognoſcere; and it is no treaſon, unleſſe it be done during the mariage with the King, and extendeth not to a Queen Dowager as hath been ſaid. And if the wife of the King doth yeeld and conſent to him that committeth this treaſon, it is treaſon in her. 33 H. 8. cap. 21. Paſch. 28 H. 8. in Spilmans Reports in Caſe of Queen Anne.

¶ Ou la compaigne de lour fitz & heire.] This alſo extendeth to the wife of the Prince during the coverture between them, and not to a Dowager, and if the wife yeeld and conſent to him that commits this treaſon, it is treaſon in her. 33 H. 8. ubi ſupra, in caſe of Queen Katherine.

¶ Heire.] Here is taken ut ſupra, for heire apparant.

Ou leigne file nient marie.] (That is,) eldeſt daughter not married at the time of the Violation, albeit there had been an elder daughter then ſhe, who is dead without iſſue.* The Mirror. Avowterors q̄ ſpergiſſent la file le Roy eignes legittime, avant ceo q̄ el ſoit marie. * Mir. cap. 1. § 5. See Brit. cap. 23. fo. 43. 44. & cap. 29. fol. 71. 1 Mar. Parl. 2. c. 1.

And the reaſon that the eldeſt only is here mentioned, is, for that for default of iſſue Male, ſhe only is inheritable to the Crown. [a] Glanvil lib. 1. cap. 2. l. 14. c. 1. Bracton. lib. 3. fol. 118. Britton. f. 16, &c. Flera. li. 1. ca. 21.

¶ Ou ſi home leva guerre enconter noſtre ſeignior le Roy.] [a] This was High Treaſon by the Common Law, for no ſubject can levy warre within the Realm without authority from the King, for to him it only belongeth. See F. N. B. 113. a. Le Roy de droit doit ſaver & defender ſon realme vers enemies, &c. Mir. ca. 1. § 5.

[b] A compaſſing or conſpiracy to levy war, is no Treaſon, for there muſt be a levying of war in facto. But if many conſpire to levy war, and ſome of them do levy the ſame according to the conſpiracy, this is High Treaſon in all, for in Treaſon all be principals, and war is levied. [b] 1 Mar. 98. b. Dier in Sir N. Throgmortons Caſe. See 21 E. 3. 13. 21 R. 2. cap. Repeale. 1 H. 4. cap. 3. 8 E. 3. 10.

If any levy war to expulſe ſtrangers, to deliver men out of priſons, to remove Counſellors, or againſt any ſtatute, or to any other end, pretending Reformation of their own heads, without warrant; this is levying of warre againſt the King: becauſe they take upon them Royall Authority, which is againſt the King. There is a diverſity between levying of war and committing of a great Riot, a Rout, or an unlawfull aſſembly. [c] For example, as if three, or foure, or more, doe riſe to burn, or put down an incloſure in Dale, which the Lord of the Manor of Dale hath made there in that particular place; this or the like is a Riot, a Rout, or an unlawfull Aſſembly, and no Treaſon. But if they had riſen of purpoſe to alter Religion eſtabliſhed within the Realm, or Laws, or to go from Town to Town generally, and to caſt down Incloſures, this is a levying of war (though there be no great number of the Conſpirators) within the Purview of this Statute, becauſe the pretence is publick and generall, and not private See hereafter, cap. 73. againſt going or riding armed. [c] See Rot. Parl. in Cro. Epiphan. 20 E. 1. Rot. 23. *Humfrey de Bohuns* Caſe. 4 Eliz. 210. b. Dier. See the ſtatute of 1 Mar. ca. 1. By which, Grand Riots in ſome Caſes be made felony.

Paſch. 39 Eliz. by all the Judges of England, I being Attourney-Generall, and preſent.

p̄vate in particular. And ſo it was reſolved in the Caſe of Richard Bradſhaw Miller, Robert Burton Maſon, and others of Oxfordſhire, whoſe Caſe was, That they conſpired and agreed to aſſemble themſelves with ſo many as they could p̄cure at Enſlowe-Hill in the ſaid County, and there to riſe, and from thence to go from Gentlemans houſe to Gentlemans houſe, and to caſt down Incloſures, as well for inlargement of High-wayes as of errable Lands. And they agreed to get Armour and Artillery at the Lord Norrys his houſe, and ſo weare them in going from Gentlemans houſe to Gentlemans houſe for the purpoſe aforeſaid, and to that purpoſe they perſwaded divers others: and all this was confeſſed by the offenders. And it was reſolved, That this was a compaſſing and intention to levy war againſt the Queen, becauſe the p̄tence was publick within the ſtatute of 13 Eliz. cap. 1. (the Letter whereof herein ſhortly followeth,) and the Offenders were attainted and executed at Enſlowe-Hill.

And this diverſity is p̄oved by a latter Branch of this Act.

Et ſi per caſe aſcun home de ceſt realme chimancha arme diſcovert ſecretment ove gents armes, contre aſcun autre, pur luy tuer, ou diſrober, ou pur luy prender, ou retainer tanq̄ il face fine, ou ranſome pur ſa deliverance, neſt lentention le Roy & de ſon counſell, q̄ en tiel caſe ſoit adjudge treaſon, mes ſoit adjudge felony, ou treſpaſſe, ſolonq̄ le ley del tre auncientment uſe. Whereby it appeareth, that bearing of armes in warlike manner, for a p̄vate revenge or end, is no levying of war againſt the King within this ſtatute. So that every gathering of force is not High Treaſon. And ſo it was reſolved in Parliament, in 5 H. 4. Rot. Parliam. nu. 11. & 12. the Earle of Northumberlands Caſe.

Rot. Parl. 5 H. 4. nu. 11, 12. 13 Eliz. cap. 1. b. The Indictments and Attainders of treaſon by force of this ſtatute are not more to be followed, becauſe the ſtatute, which made them good, is expired. Dier, 3 & 4 Ph. & Mar. 144. 10 E. 4. 6. 1 Mar. Treaſon, Br. 24. Ter. Mic. 8 H. 8. Mich. 7 H. 5. Coram Rege. Hereſ. Rot. 20.

By the ſaid Statute of 13 Eliz. cap. 1. it is enacted, declared, and eſtabliſhed, That during the naturall life of Queen *Elizabeth*, if any within the Realm or without, ſhould compaſſe, imagine, invent, deviſe, or intend to levy war againſt her Majeſty, within this Realme, or without, and the ſame declare by writing, or word, &c. that it ſhould be High Treaſon: So during the life of the Queen, a conſpiracy to levy war was High Treaſon, though no war were levied; and upon that law, Bradſhaw, Burton, and others were attainted of High Treaſon, for conſpiracy only to levy war. But it was reſolved by all the Juſtices, that it was no treaſon within the ſtatute of 25 E. 3. as hath been ſaid. The words in this law are [levie guerre:] An actuall Rebellion or Inſurrection is a levying of war within this Act, and by the name of levying war is to be expreſſed in the Indictment. If any with ſtrength and weapons invaſive, and defenſive, doth hold and defend a Caſtle or Fort againſt the King and his power, this is levying of war againſt the King within this Statute of 25 E. 3.

[a] Rot. Parl. 20 E. 1. nu. 2. *John de Brittaines* Caſe. Rot. Parl. 33 E. 1. Rot. 6. *Rob. de Ros de werks* Caſe. 8 E. 3. 20. 38 E. 3. 31. 2. Parl. 4 R. 2. nu. 17, 18, &c. 5 R. 2. Triall 54. Hil. 18 E. 3. coram rege. Rot. 145. Eborum. 43 Aſſ. 18. 42 Aſſ. 29. *Gilbert de M.* was a Scot. Rot. Parl. 7 R. 2. nu. 15. 17. 24. 7 H. 4. 47. Cuſt. de Norm. ca. 73.

It was reſolved by all the Judges of England in the reign of King H. 8. that an Inſurrection againſt the Statute of Labourers, for the inhanſing of ſalaries and wages, was a levying of war againſt the King, becauſe it was generally againſt the Kings Law, and the offenders took upon them the reformation thereof, which ſubjects by gathering of power ought not to do. It was ſpecially found, that divers of the Kings ſubjects did miniſter and yeeld victuals to Sir John Oldcaſtle Knight, and others, being in open war againſt the King, and that they were in company with them in open war; but all this was found to be pro timore mortis, & quod receſſerunt, quam cito potuerunt: and it was adjudged to be no Treaſon, becauſe it was for fear of death. Et actus non facit reum, niſi mens ſit rea. And therefore this in them was no levying of war againſt the King within this Act.

¶ Ou ſoit adherent as enemies noſtre ſeigniour le roy, a eux donant aide & comfort en ſon roialme & aylors.]

¶ Adherent.] [a] This is here explained, viz. in giving aide and comfort to the Kings enemies within the Realm or without: Delivery or ſurrender of the Kings Caſtles or Forts by the Kings Captain thereof to the Kings enemy within the Realm or without for reward, &c. is an adhering to the Kings enemy, and conſequently treaſon declared by this Act. [b] A. is out of the

[a] Vid. 13 Eliz. Dier 298.
[b]

the Realm at the time of a Rebellion within England, and one of the Rebels flie out of the Realm, whom A. knowing his treaſon doth aide or ſuccour, this is no treaſon in A. by this branch of 25 E. 3. becauſe the traytor is no enemy, as hereafter ſhall be ſaid; and this ſtatute is taken ſtrictly.

¶ As enemies.] Inimicus in legall underſtanding is hoſtis, for [c] the ſubjects of the King, though they be in open war or rebellion againſt the King, yet are they not the Kings enemies, but traytors; for enemies be thoſe that be out of the allegiance of the King. If a Subject joyn with a forraine Enemy and come into England with him, he ſhall not be taken priſoner here and ranſomed, or proceeded with as an enemy ſhall, but he ſhall be taken as a traytor to the King.

[d] An Enemy comming in open hoſtility into England, and taken, ſhall be either executed by Marſhall Law, or ranſomed; for he cannot be indicted of treaſon, for that he never was within the protection or ligeance of the King, and the Indictment of Treaſon ſaith, Contra ligeantiam ſuam debitam.

[e] David Prince of Wales levied war againſt E. 1. This was Treaſon, for that he was within the homage and ligeance of the King, and had judgement given againſt him as a Traytor, and not as an enemy. And albeit in many preſidents of Indictments, Subjects that be Rebels, and Traytors, &c. be called proditores & inimici; yet within this ſtatute they are not inimici.

[f] In the Duke of Northfolks Caſe the queſtion was, a league being between the Queen of England and the King of Scots, whether the Lord Heriſe and other Scots in aperto prælio burning and waſting divers Towns in England without the aſſent of the King, were enemies in law within this ſtatute, and reſolved that they were. § See more hereafter in this third part of the Inſtitutes. cap. 49. of Pyracy, &c. upon the ſtatute of 28 H. 8. cap. 15.

Ou per ailors.] That is to ſay, out of the Realm of England. But then it may be demanded, how ſhould at this time this forain treaſon be tried? And ſome [h] of our Books doe anſwer, that the offender ſhall be indicted and tried in this Realme where his land lieth, and ſo it was adjudged in 2 H. 4. But now by the ſtatute of 35 H. 8. cap. 2. (which yet remaines in force) All offences made or declared, or hereafter made or declared treaſons, miſpriſions of treaſon, and concealments of treaſon, committed out of the Realme of England, ſhall be inquired of, heard, and determined, either in the Kings Bench or before Commiſſioners in ſuch Shire as ſhall be aſſigned by the King. If it be before Commiſſioners, it hath been commonly uſed, that the King doth write his name in the upper part of the Commiſſion. But in the Caſe of Patrick O Cullen an Iriſhman, the Queen did put her Signature to the Warrant to the Lord Keeper, and not to the Commiſſion: * and it was holden by the Juſtices that the one way and the other was a ſufficient aſſignement by the King within the ſtatute of 35 H. 8.

[i] It was reſolved by all the Judges of England that for a treaſon done in Ireland the offender may be tryed by the ſtatute of 35 H. 8. in England, becauſe the words of the ſtatute be, All Treaſons committed out of the Realme of England, and Ireland is out of the Realme of England. And ſo it was reſolved in Sir John Parrots Caſe. And our word here [per ailors] is as much as out of the Realme of England. See Paſch. 2 H. 4. coram Rege Rot. 8. Salop. Treaſon in Wales.

[k] All treaſons done upon the Sea ſhall be inquired, heard, and determined in ſuch ſhires and places of the Realm as ſhall be limited by the Kings Commiſſion, in like form and condition, as if the ſame had been done upon the land, &c. after the common courſe of the lawes of this land. And by the preamble it appeareth, that it could not be tried by the Common law, but by the Civill law before the Lord Admirall. See hereafter in the expoſition of the ſtatute of 28 H. 8. cap. 15. & infra, cap. 49.

See hereafter.
35 H. 8. cap. 2.
c 43 Aſſ. 28, 29.
33 H. 6. 1.
19 E. 4. 6. a. & b.
4 Mar. Treaſon, Br. 32.
d Mar. ibid. 24.
21 E. 3. 23.
22 aſſ. p. 49.
13 El. Dier 298.
Ex libro de Griffin. de Perkin Werbeck.
d Dier 4 Mar. fo. 145. a.
Lib. 7. fo. 6. b. Calvins Caſe.
e Heta lib. 1. c. 16.
f Mich. 13 & 14. Eliz. per Juſtice.
19 E. 4. 6. b.
18 H. 6. ca. 4.
20 H. 6. cap. 1.
g 27 E. 3. cap. 13.
31 H. 6. cap. 4.
7 E. 4. 14. 13 E. 4. 9. 21 E. 3. 16, 17.
Regiſt. 129. Fit. N. B. 114.
b 4 Aſſ. p. 15.
5 R. 2. *ubi ſupra.*
19 E. 4. 6. b.
Dier 3 Mar. 132.
Paſch. 2 H. 4. *coram rege.* Rot. 8. Wallia.
35 H. 8. cap. 2.
3 Mar. *ubi ſupra.*
13 Eliz. Dier 298.
Stanford Pl. Cor. fo. 90. a. & b. See the firſt part of the Inſtitutes, 440.
* Hil. 36 Eliz. in the Caſe of Patrick O Cullen, for a Treaſon at Bruſſels *in partibus Marinis.*
i 33 El. in Ornicks caſe lib. 7. f. 23. *Calvins* caſe. *Vid.* Dier Mich. 19 & 20. Eliz. fo. 360. lib. 11. fo. 63. in Doct. *Fosters* Caſe.
k 28 H. 8. ca. 15. This Act concerning Treaſons is not taken away by the ſtatute of 35 H. 8. cap. 2. *Vide infra* cap. 49. fo. 181. of Pyracy, &c. Vid. 5 Eliz. 5. c. 5.

¶ Et

¶ Et de eo provablement ſoit attaint per overt fait per gents de lour condition.] In this branch four things are to be obſerved.

g See 1 E.6.c.2.12. the laſt clauſe. 5 E.6.c.2.11. 1 & 2 Ph. & Mar. c.2.10.& 11. 1 Eliz.cap.6. 13 Eliz.cap.1. Stanf. pl.Cor. 89. & 164. Br. coron. 4 Mar. 220. Dier 2 Mar.fo.99.

g First this word [provablement] provably, that is, upon direct and manifeſt proof, not upon conjecturall preſumptions, or inferences, or ſtraines of wit, but upon good and ſufficient proofe. And herein the adverb [provablement] provably, hath a great force, and ſignifieth a direct and plain proof; which word the King, the Lords, and Commons in Parliament did uſe, for that the offence was ſo hainous, and was ſo heavily, and ſeverely puniſhed, as none other the like, and therefore the offender muſt provably be attainted, which words are as forcible, as upon direct and manifeſt proof. Note, the word is not [provably] for then commune argumentum might have ſerved, but the word is [provably,] be attainted.

2 This word [attaint] neceſſarily implieth that he be proceeded with, and attainted according to the due courſe, and proceedings of law, and not by abſolute power, or by other meanes, * as in former times had been uſed. h And therefore if a man doth adhere to the enemies of the King or be ſlain in open warre againſt the King, or otherwiſe die before the attainder of treaſon, he forfeiteth nothing, becauſe (as this Act ſaith) he is not attainted: wherein this Act hath altered that, which before this Act, in caſe of treaſon, was taken for law. And the ſtatute of 34 E.3. cap.12. ſaves nothing to the King, but that which was in eſſe, and pertaining to the King at the making of that Act. And this appeareth by a judgement in parliament in Anno 29 H.6. cap. 1. That * Jack Cade being ſlain in open rebellion could no way be puniſhed, or forfeit any thing, and therefore was attainted by that act of High treaſon.

* Rot. parl.an.33. E.1.Rot.6 Jo. Salvyns caſe.
h 43 Aſſ. 28. 8 E.3.20. 7 H.4.27.34 E.3. cap.12. Lib.4. fo.57. the Sadlers caſe.
* 29 H.6. cap. 1.

vide ſupra verbo ¶ *Mort.* fo.6.

3 ¶ Per overt fait,] per apertum factum. This doth alſo ſtrengthen the former expoſition of the word [provablement] that it muſt be provably, by an open act, which muſt be manifeſtly proved. As if divers do conſpire the death of the King, and the manner how, and thereupon provide weapons, powder, * poiſon, aſſay harneſſe ſend letters, &c. or the like for execution of the conſpiracy. Alſo preparation by ſome overt act, to depoſe the King, or take the King by force, and ſtrong hand, and to impriſon him, untill he hath yeelded to certain demands, this is a ſufficient overt act to prove the compaſſing, and imagination of the death of the King: for this upon the matter is to make the King a ſubject, and to diſpoil him of his kingly office of royall government. And ſo it was reſolved by all the Judges of England, Hil.1 Jac. regis, in the caſe of the Lo. Cobham, Lord Gray, and Watſon and Clark Seminary prieſts: And ſo had it been reſolved by the Juſtices, Hil.43 Eliz. in the caſe of the Earles of E. and of S. who intended to go to the court where the Queen was, and to have taken her into their power, and to have removed divers of her Counſell, and for that end did aſſemble a multitude of people this being raiſed to the end aforeſaid was a ſufficient overt act for compaſſing the death of the Queen. And ſo by woefull experience in former times it hath fallen out, in the caſes of King E.2. R.2. H.6. & E.5. that were taken, and impriſoned by their ſubjects. And this is made more plain by the legall form of an indictment of treaſon: For firſt it is alledged according to this act, Quod * proditorie compaſſavit, & imaginatus fuit mortem & deſtructionem dñi regis, & ipſum dom. regem interficere, &c. In the ſecond part of the indictment is alledged the overt act, & ad illam nephandam, & proditoriam compaſſationem, imaginationem, & propoſitum ſuum perficiend & perimplend, and then certainly to ſet down the overt fact for preparation to take, and impriſon the King, or any other ſufficient overt act, which of neceſſity muſt be ſet down in the Indictment. Hereby it appeareth how inſufficient many indictments were of High treaſon, wherein it was generally alledged, that per apertum factum compaſſavit, & imaginatus fuit mortem dom. regis, &c. * For example, Termo Mic. anno 5 E.6. Edward Duke of Somerſet was indicted before Commiſſioners of Oyer and Terminer in London, quod ipſe deum præ oculis ſuis non habens, ſed inſtigatione diabolica

vide 21 R.2. cap. 3. but it is repealed by 1 H 4.ca.3.
* Hil.36 Eliz. Doctor Lopes caſe 13 Eliz.c.1. Brook. Treaſon 24.
Hill. 1 Ja. R. Lo. Cobhams Caſe.

* In ancient time *traditioſe & felonicè*. parl.33 E.1. rot.6. Robert de Ros his caſe, but now *proditoriè* is neceſſarily required.
vide Britton fo. 16. & 19. 1 Mar. Br. treaſon 24.
* Ter. Mic. 5 E.6. Liſb. Intr. Coke fo.48.
Sanguinis O malefiſta fiat, &c.

lica ſeductus, apud Holborne in parochia Sancti Andreæ infra civitatem London, viz. 20 die Aprilis anno regni domini Regis Edw. ſexti quinto, & diverſis diebus & vicibus antea & poſtea falſe, malicioſe, & proditorie * per apertum factum circumivit, compaſſavit, & imaginavit cum diverſis aliis perſonis prædictum dominũ Regem de ſtatu ſuo regali deponere & deprivare, &c. Which Indictment, and all others of like form were againſt law, as hath been ſaid and of the matter of this Indictment that noble Duke was by his Peers found not guilty. But then it may be demanded, for what offence he had judgement of death, and 2. what law made it an offence. The offence appeareth in his Indictment, for the former part thereof contained High treaſon, whereof he was acquitted, & the latter part contained one only offence of felony (whereof he was found guilty) in theſe words, Et ulterius Juratores prædicti præſentant, quod præfatus Edwardus dux Somerſet Deũ præ oculis ſuis non habens, ſed inſtigatione diabolica ſeductus 20 Maii An. regni dicti Dom. Regis Edwardi ſexti quinto ſupradicto, ac diverſis aliis diebus & vicibus antea & poſtea apud Holborn in prædict. paroch. Sancti Andreæ in civitate London, & apud diverſa alia loca infra civitatem London prædict. felonice ut felo dicti Dom. Regis per aperta verba & facta procuravit, movit, & inſtigavit complurimos ſubditos ipſius domini Regis ad inſurgendum, & apertam rebellionem & inſurrectionem infra hoc regnum Angliæ movend' contra ipſum dominum Regem, & ad tunc & ibid. felonice ad capiendum & impriſonandum præclarum Johannem comitem Warwick de privato conſilio domini Regis ad tunc exiſten', contra pacem dicti domini Regis, coronam & dignitatem ſuam, & contra formam ſtatuti in hujuſmodi caſu editi & proviſi. The ſtatute whereupon this Indictment was intended to be grounded, was the branch of the ſtatute of 3 & 4 E. 6. by which it is provided [That if any perſon or perſons by ringing of any Bel, &c or by malitious ſpeaking or uttering of any words, or making any Outcry, &c. or by any other deed or act ſhall raiſe or cauſe to be raiſed or aſſembled any perſons to the number of 12 or above, to the intent that the ſame perſons ſhould do, commit, and put in ure any of the acts or things above mentioned (whereof to take and impriſon any of the Kings moſt honourable Privie Counſell was one) and the perſons to the number of 12 or above ſo raiſed and aſſembled after requeſt and commandement (in ſuch ſort as in that Act is preſcribed) ſhall make their abode and continue together, as is aforeſaid, (in the Act) or unlawfully perpetrate, doe, commit, or put in ure any of the acts or things aboveſaid, that then all and ſingular perſons, by whoſe ſpeaking, deed, act, or any other the meanes above ſpecified any perſons to the number of 12 or above, ſhall be raiſed or aſſembled for the doing, committing, or putting in ure any of the acts or things above mentioned, ſhall be adjudged for his ſo ſpeaking or doing a felon, and ſuffer execution of death as in caſe of felony, and ſhall loſe his benefit of Sanctuary and Clergy.] Hereby it doth manifeſtly appeare, that the truth concerning this Noblemans attainder, and execution in divers things, is contrary to the vulgar opinion, and ſome of our Chronicles, and in ſome points contrary to law. Firſt, that for the felony made by the ſaid branch of the ſaid Act he could not have had his Clergie, for Clergie in that Caſe is expreſly ouſted by the ſaid Act. 2. That he was not indicted for going about, &c. the death of the Earle of Warwick then of the Kings Privie Counſell, but only for his taking or impriſonment, and therefore could not be indicted upon the ſtatute of 3 H. 7. as ſome have imagined. 3. That the Indictment is altogether inſufficient, for it purſueth not the words or matter of the ſaid branch of the ſaid Act, as by comparing of them it manifeſtly appeareth; which (we being deſirous that truth may appeare in all things) we have thought good upon this occaſion to adde for advancement of truth. 4. That being but attainted of felony, he could not by law be beheaded, as elſewhere we have ſhewed. And this Act that created the felony ſaith, that ſuch a felon ſhall ſuffer execution of death, as in caſe of felony. 5. Laſtly, this whole Act was juſtly holden to be a doubtfull and dangerous ſtatute, and therefore was deſervedly repealed. And after the fall of this Duke, ſee the preamble of the ſtatute of Subſidie of 7 E. 6.

* Per apertum factum.

Vid. hereafter ca. 5. de Hereſie, generall Indictments againſt Lolards, &c.

The reſidue of the Indictment of the Duke of Somerſet.

To take and impriſon one of the Privie Councell.

Contra formam Statut.

3 & 4 E. 6. cap. 5.

3 H. 7. ca. 14.

Lib. 9. fo. 114. in Seignior Sanchers caſe.

1 Mar. cap. 12.
1 Eliz. ca. 16.
7 E. 6. ca. 12.

And now to returne to Cases of High Treason. If a man be arraigned upon an Indictment of High Treason, and stand mute, he shall have such judgement, and incurre such forfeiture, as if he had been convicted by Verdict, or if he had confessed it. For this standeth well with this word provablement, for fatetur facinus, qui judicium fugit: but otherwise it is in case of Petit Treason, Murder, or other Felony.

13 Eliz. Dier 298. 13 Eliz. cap. 1. *Nota bene. Vide supra verbo* Mort. * Inter leges Alvredi, cap. 4.

If a subject compire with a forraine Prince beyond the seas to invade the Realme by open hostility, and prepare for the same by some overt act, this is a sufficient overt act for the death of the King, for by this Act of Parliament in that Case there must be an overt act. * Qui cupiti, aut saluti Regis perfidiosè sive solus, sive servis aut sicariis mercede conductis stipatus insidiabitur, vita & fortunis ejus omnibus privator. So as thereby an overt act was required.

The composition and connexion of the words are to be observed, viz. [thereof be attainted by overt deed.] * This relateth to the severall and distinct treasons before expressed, (and specially to the compassing and imagination of the death of the King, &c. for that it is secret in the heart) and therefore one of them cannot be an overt act for another. As for example: a conspiracy is had to levie warre, this (as hath been said, and so resolved) is no treason by this Act untill it be levied, therefore it is no overt act or manifest proofe of the compassing of the death of the King within this Act; for the words be (de ceo &c.) that is, of the compassing of the death. For this were to confound the severall Classes, or membra dividentia, & sic de cæteris, &c.

* So resolved by the Justices Pasc. 35 Eliz. which we heard and observed.

[a] Divers latter Acts of Parliament have ordained, that compassing by bare words or sayings should be High Treason; but all they are either repealed or expired. And it is commonly said, that bare words may make an Heretick, but not a Traytor, without an overt act. And the wisdome of the makers of this law would not make words only to be Treason, seeing such variety amongst the witnesses are about the same, as few of them agree together. But if the same be set downe in writting by the Delinquent himselfe, this is a sufficient overt act within this Statute.

[a] 26 H. 8. cap. 13. 1 E. 6. cap. 13. 1 & 2 Ph. & Mar. cap. 9. 10. 1 Eliz. cap. 6. 13 Eliz. ca. 1, &c. 14 Eliz. cap. 1.

[b] Cardinall Poole, albeit he was a subject to H. 8. and of the Kings blood, (being descended from George Duke of Clarence, Brother to King E. 4.) yet he in his Booke of the Supremacy of the Pope, written about 27 H. 8. incited Charles the Emperour, then preparing against the Turke, to bend his force against his naturall Soveraigne Lord and Countrey; the writting of which Booke was a sufficient overt act within this Statute: and to move the Emperour the rather in that Book, he made H. 8. almost as ill as the Turke, in these words, In Anglia sparsum nunc est hoc semen, ut vix à Turcico internosci queat, idque authoritate unius coaluit.

[b] See the fourth part of the Institutes, ca. 26. Brook treason 24. writing of Letters.

[c] In the Preamble of the Statute of 1 Mar. concerning the repeale of certaine Treasons, &c. It is agreed by the whole Parliament, that lawes justly made for the preservation of the Common-wealth without extreame punishment, are more often obeyed and kept, then lawes and statutes made with great and extreame punishments; and in speciall, such lawes and statutes so made: whereby not only the ignorant and rude unlearned people, but also learned and expert people minding honesty, are oftentimes trapped and snared, yea, many times * for words only, without other fact or deed done or perpetrated: therefore this Act of 25 E. 3. doth provide, that there must be an overt deed. But words without an overt deed [d] are to be punished in another degree, as an high misprision.

[c] 1 Mar. cess. 1. c. 1. See the statute of 3 H. 7. hereafter, cap. 4. directly in the point by the judgement of the Parliament. *Nota*, this Act of 25 E. 3. saith, *per overt fait, per apertum factum*, and not *per apertum dictum*, by word or confession. See 25 H. 8. c. 12. Eliz. Barton, Edw. Locking, and others attainted by Parliament for divers words and conspiracies, which being not within this Act without an overt act they could not be attainted by the Common law. * Nota.

[d] See in the chapter of Misprision.

¶ Per gents de lour condition.] That is, per pares, or their equals, whereof we have spoken before in the exposition of the [e] 29 Chapter of Magna Carta. Verb. per judicium parium suorum, and more shall be said hereafter. This Branch (per gents de lour condition) extendeth only to a conviction by Verdict, whereof the Statute particularly speaketh; but yet where the party indicted confesseth the offence or standeth mute, he shall have judgement as in case of High Treason. For this branch being affirmative, to taken cumulative

[e] Mag. Car. ca. 29.

and

and not privative. And therefore ſeeing upon confeſſion, or ſtanding mute, the judgment in caſe of High treaſon was given at the common law this Act being as it hath been ſaid, affirmative, taketh not away the ſame: And (to ſay once for all) the clauſe hereafter of reſtraint of like caſes, &c. extends onely to offences, and not to tryals, judgements, or executions.

℣ Si home counterface le grand Seale] All our ancient Authors agree that this was High treaſon by the common law, and for this offence his judgement was to be drawn, hanged, and quartered, at the common law, as in other caſes of High treaſon, (the counterfeiting of the Kings money excepted.) See The ſecond part of the Inſtitutes. W. 1. cap. 5.

Bract. l. 3. fo. 118. Brit. fo. 10. &c. Bract. l. 5. fo. 414. Fleta l. 1. ca. 21. Mirror ca. 1. § 6. de fauſonerie. 29 Aſſ. pa. 49. * 1 E. 3. tit. Chſe F. 13. 22 Aſſ. Pl. 49.

* In ancient time every treaſon was comprehended under the name of felony, but not è contra. And therefore a pardon of all felonies was ſometime allowed in caſe of High treaſon. But the law is, and of long time hath been otherwiſe holden: and if the indictement were felonicè, and not proditoriè, (for the King may leſſen the offence, if it pleaſe him) then the pardon of felonies is good at this day, for no Indictment can be of High treaſon without this word [proditoriè:] and in qualibet proditione implicatur felonia, quia in quolibet brevi de exigendo ſuper quolibet indictamento de proditione proclamator facit ſic, I. B. An exigent on thy head of treaſon and felony.

2 R. 3. 9.

3 H. 7. 10. 2.

A Compaſſing, intent, or going about to counterfeit the great ſeale is no treaſon, but there muſt be an actuall counterfeiting, alſo it muſt be to the likeneſſe of the Kings great ſeale; the words be, Counterface le grand ſeale le Roy.

Now it is to be ſeen what ſhall be ſaid a forging, or counterfeiting of the great ſeale. If the Lord Chancellor, or Lord Keeper put the great ſeale to a Charter &c. without warrant, this is no treaſon, becauſe the great ſeale is not counterfeited. But it ſeemeth by Britton fo. 10. b. that it was treaſon at the common law, and of that opinion is Fleta fo. 29. a. but it is no treaſon now (without queſtion) by the negative clauſe of this Act.

If a man take wax lawfully imprinted with the great ſeale from one patent, and fix it to a writing purporting a grant from the King, there have been divers opinions in this caſe what the offence is, which we will rehearſe.

In 40 Aſſ. which was about 15. years after the making of this Act, it was not holden High treaſon, but a great miſpriſion, for that it is no counterfeiting of a new, but an abuſe of the true great ſeale.

40 Aſſ. p. 33.

In 42 E. 3. the Abbot of Bizer cauſed Rob. Rigge his Commoigne to raſe a Charter of R. 1. and put out the manor of Fiſfetruda, and in place thereof put in Eſſeghe. And this offence was heard, and ſentenced before the King and his Counſell in the Star-chamber, as a great offence and miſpriſion: for if it had been High treaſon, it ſhould have had another tryall, and yet this was a great abuſe of the great ſeal.

Rot. Clauſ. 42 E. 3. nu. 8. in Coro.

2 H. 4. The taking of the Great Seale from one Patent, and firing it to a Commiſſion to gather money, &c. was adjudged to be ſuch an offence, as the offender had judgement to be drawne, and hanged. The record of which caſe we have peruſed, and the effect thereof is this. The partie is indicted generally for counterfeiting of the great ſeal, whereunto he pleaded not guilty, and the Jury found him not guilty of the counterfeiting of the great ſeale, as was ſuppoſed by the indictment, and found further ſpecially, that he tooke the great ſeale from one patent, and put it to the commiſſion, and that the party put the ſame in execution, and there judgement was given, that he ſhould be drawne and hanged: which (whatſoever the offence was) ought not to have been given upon this verdict, the Jury finding him not guilty of the offence alledged in the indictment: And beſides the judgement is ſuch, as is given in caſe of Petit treaſon, and not of high treaſon. Hereby it appeareth how dangerous it is for any to report a caſe by the ear, ſpecially concerning treaſon, unleſſe he had advisedly read the Record: for (as I take it) the miſreport of this caſe hath hatched errors, and he miſtooke the judgement, if it had been High treaſon, for then it ſhould have been drawne, hanged, and quartered.

2 H. 4. fo. 25.

Errores ad ſua principia referre, eſt refellere, To bring errors to their beginning, is to ſee their laſt.

37 H. 8. Br. tit. Treaſon. A Chaplain had fired ſuch a great Seale to a Patent of diſpenſation with non-reſidence, and this was holden a miſpriſion, and not High treaſon, for it was an abuſe of the great ſeale, and no counterfeiting of it. Stanford ſaith that it was adjudged in his time according to the book of 2 H. 4. Et ſic ex errore ſequitur error.

37 H.8.Br. Treaſon.

Stanf. Pl. Coron. fo. 3. c. Bracton agreeth with it. *Vbi ſupra.* Leaks Caſe. Hil. 4. Ja. R.

G. Leak a clark of the Chancery joyned two cleane parchments fit for letters patents ſo cloſe together with mouth glew, as they were taken for one, the uppermoſt being very thinne, and did put one labell through them both, then upon the uttermoſt he writ a true patent, and got the great ſeale put to the labell, ſo the labell and the ſeale were annexed to both the parchments, the one written, and the other blanck: he cut off the glewed ſkirts round about, and tooke off the uppermoſt thinne parchment (which was written, and was a true and perfect patent) from the labell, which with the great ſeale did ſtill hang to the parchment, then he wrote another patent on the blanck parchment, and did publiſh it as a good patent. Hereupon two queſtions were moved. 1. Whether this offence be High treaſon or no. 2. If it be High treaſon, then whether he may be indicted generally for the counterfeiting of the great ſeale, or els the ſpeciall fact muſt be expreſſed. And upon conference had between the Judges, upon great adviſement and conſideration it was in the end, concerning the firſt point, reſolved by the Juſtices (ſaving a very few) upon the authorities aforeſaid, and for that it was no counterfeiting of the great ſeale within this ſtatute, that this offence was neither High treaſon, nor Petit treaſon, becauſe it is not within either of the branches of this ſtatute, but it is a very great miſpriſion, and the party delinquent liveth at this day. As to the 2. point it was reſolved, that if the ſpeciall matter had amounted to counterfeiting of the great ſeale in law within this Act, then he might have been generally indicted of High treaſon for counterfeiting the great ſeale. As if a man in an affray kill a Conſtable that comes to keep the Kings peace without any expreſſe malice prepenſed, this is murder in law, and yet the delinquent may be generally indicted of murder by malice prepenſed.

40. Aſſ. 33.
42 E. 3. Rot. Cl. *Vbi ſupra.*
37 H. 8. Br. dev.

And [a] Fleta who wrote before this Act telleth us, that Crimen falſi dicitur, cũ quis illicitus (cui non fuerit ad hoc data authoritas) de ſigillo regis rapto vel invento, & brevia cartaſque conſignaverit. But whatſoever offence it was before the making of this ſtatute, it is after this ſtatute no High treaſon, becauſe it is no counterfeiture of the great ſeale, but a miſuſor thereof.

[a] Fleta l. 1. ca. 22. Britton fo. 10 b. See before. fo. 15.

Qui [b] convictus fuerit pro falſatione ſigilli dom. regis, quòd tradatur Epiſcopo Sarum, qui eum petiit ut clericum ſuum ſub pœna & in forma qua decet, quia videtur concilio quod in tali caſu non admittenda eſt purgatio, &c. Hereby it ſhould appeare that in thoſe dayes a man might have had his Clergy for this offence; and therefore, as ſome hold, it was not then holden to be High treaſon: herein alſo is the preamble of this Act, concerning divers opinions in caſe of treaſon, verified.

[b] Rot. Parl. Hil. 18 E. 1. fo. 92. nu. 125.

This ſtatute naming the great ſeale and privy ſeale, the forging and the counterfeiting of the privy ſignet, or of the ſigne manuell, was not within this ſtatute. But by the [c] ſtatute of 1 Mar. it is made High treaſon in both caſes. Albeit that in this Act there is no mention made of * aiders and conſenters to this counterfeiting, yet they are within the purview of this ſtatute, for there be no acceſſaries in High treaſon.

[c] 1 Mar. cap. 6. 1 & 2 Ph. & Mar. ca. 11.

* 19 H. 6. 47. 3 H. 7. 10. Stanf. Pl. Coron. 3. vide poſtea ca. 64. *principall & acceſſ.* See Mich. 13 & 14 Eliz. Dier 296. Coniers Caſe.

¶ Ou ſa [d] monye.] [e] This was treaſon by the common Law, as it appeareth by all the ſaid ancient authors, ubi ſupra (verbo, Si home counterface le grand ſeale) and therefore the opinion in 3 H. 7. is holden for no law, that it was but felony before this Act. [f] The forging of the Kings coine, is High treaſon, without utterance of it, for by this Act the counterfeiting is made High treaſon. See the ſecond part of the Inſtitutes. W. 1. cap. 15. [g] See Thom. Walſingham, Hypodigme Neuſtrie. An. Dom. 1278. Judei pro tonſura monetæ in magna multitudine ubique per Angliam ſuſpenduntur, &c.

[d] See Mat. Par. *Anno* 34 H. 3. pag. 753. *de petunia approbata & reprobata.* Et Walſingham 28 E. 1. *Anno Dom.* 1300. ſtat. 31 E. 1. *de weights & Meaſures.* Raſt. 7.

[e] Vet. Magna Chart. ca. Jtin. fo. 141. a. 22 Aſſ. p. 49. 3 H. 7. 10. 25 E. 3. 4. 2. b. Coro. 130.

[f] 6 H. 7. 13. 1 R. 3. 1.

[g] Walſ. Hyp. Neuſtrie pa. 69. 1278. 6 E. 1. [h] 3 H. 7. 10. a. b.

[h] Si ipſe qui facit monetam authoritate regis, &c. illam facit minus in pondere vel

vel allaiata, *viz.* Alcumino vel alio falſo metallo contra ordinationem, &c. This is there holden to be High Treaſon, and by that Book taken for a counterfeiter of the Kings money within the Purview of this ſtatute. [a] And herewith agreeth Britton, who ſaith, Des fauceres & ount noſtre monye counterfeit ou pluis de alaye miſe in noſtre monye, & nuſter, ne ſerroit ſolonq; le forme & uſage de noſtre Realme.

[b] Ordeine fuit & nul roy de ceſt realme ne puit changer ſa money, ne impairer, ne amender, ne auter monye faire & de ore & argent, ſans aſſent de tours les Counties. It was ordained, that no King of this Realme might not change his money, nor impaire, nor amend the ſame, nor other money make then of Gold or Silver, without aſſent of Parliament.

[c] Clipping, waſhing, and filing of the money of this Realme, was no counterfeiting of it within this Act. And therefore being a like Caſe, it was declared by Parliament in Anno 3 H.5. cap.6. to be High Treaſon; but that Act being repealed by 1 Mariæ the ſtatute of 5 Eliz.cap. 11. hath [d] declared, that clipping, waſhing, rounding, or filing, for wicked lucre and gaine, &c. to be High Treaſon. And by the ſtatute of [e] 18 Eliz. it is declared, That if any perſon for wicked lucre or gaines-ſake, ſhall by any art, wayes, or meanes whatſoever, impaire, diminiſh, falſifie, ſcale, or lighten the Kings money, &c. it is High Treaſon, for being a like caſe, it was to be declared by Parliament.

Forging [f] or counterfeiting of forraine money, which is not currant within the Realme, is miſpriſion of Treaſon, and the offender ſhall forfeit, as for concealement of High Treaſon.

¶ Sa money.] [g] This extendeth only to the Kings money coined within this Realme; and therefore after this ſtatute, if a man had counterfeited the money of another kingdome, though it were currant within this Realme, it was no treaſon, untill it was ſo declared by Parliament [h] in An. 1 Mariæ, and in An. 1 & 2 Ph.& M. and the ſaid Acts of 5 Eliz. & 18 El. do extend to forain coyne currant within this Realme. And it is holden, that at the making of this ſtatute of 25 E 3. there was no money currant within this Realme, but the Kings own coyne. [i] See the ſtatute called Statutum de moneta magnum, & ſtatutum de moneta parvum. And it is to be knowne, that if any doe counterfeit the Kings coyne contrary to this ſtatute of 25 E.3. [k] he ſhall have the puniſhment of his body, but as in caſe of Petit Treaſon, that is, to be drawne and hanged till he be dead, but the forfeiture of his lands is as in other caſes of High Treaſon, for this ſtatute is but a declaration of the Common law, and the reaſon of his corporall puniſhment is, for that in this caſe he was only drawne and hanged at the Common law, but a woman in that caſe was to be burnt.

[l] The Abbot of Weſtenden in the County of Buckingham for counterfeiting and reſection of the Kings money, was adjudged to be drawne and hanged, and not quartered. The want of obſervation of the ſaid diſtinction hath made ſome to erre in their judgement. Nota. This Act of 25 E.3. maketh no expreſſion of the judgement, therefore ſuch judgement as was at the Common law either in caſe of High Treaſon or Petit Treaſon muſt be given.

But if one be attainted for diminiſhing of the Kings mony upon any of the ſtatutes made in Queen Maries time, or in the time of Queen Elizabeth, becauſe it is High Treaſon newly made, the offender ſhall have judgment as in caſe of High Treaſon, which judgment you may ſee in the firſt part of the Inſtitutes, Sect. 747.

[m] And when a woman commits High Treaſon and is quick with childe, ſhe cannot upon her arraignment plead it, but ſhe muſt either pleade not guilty, or confeſſe it: and if upon her plea ſhe be found guilty, or confeſſe it, ſhe cannot alleage it in arreſt of judgement, but judgement ſhall be given againſt her: and if it be found by an inqueſt of Matrons that ſhe is quick with childe, (for privyment enſent will not ſerve) it ſhall arreſt, and reſpite execution till ſhe be delivered, but ſhe ſhall have the benefit of that but once, though ſhe be againe quick with

[a] See Inter leges Athelſtani, ca. 14. Canuti, cap. 61. Britton cap. 5. fo. 10. b. See the Mirror, ca. 1. §. 6. De la mony falſifie acc' with 3 H. 7. and ca. 5. §. 1. and Fleta ca. 22. acc'

[b] Mirr. ca. 1 § 3. inter Artic. perviels royes ordeinus. Rot. Par. 17 E 3. nu. 15. Vide hic poſtea, cap. 31. 45 E. 3. ca. 13. 9 H. 5 cap. 11. Stat. 1. See the ſecond part of the Inſtitutes, ca. 20. Artic. ſuper Cart. and the expoſition upon the ſame.

[c] 3 H. 5. ca. 6. 1 E. 6. cap. 12. 5 Eliz. cap. 11.

[d] *Nota*, for wicked lucre and gain.

[e] 18 Eliz. cap. 1.

[f] 14 Eliz. cap. 3.

[g] See hereafter, cap. Principall & Acceſſory.

[h] 1 Mar. cap. 6. 1 & 2 Ph.& Mar. cap. 11.

[i] Vet. Mag. Carta, part. 2. fol. 38, 39, 40.

[k] Fleta lib. 1. c. 22. who wrote before this ſtatute, which is but a law Declaratory, as it appeareth before. 23 Aſſ. p. 2. Dier 6 Eliz. Term. Tr. M.S. *pro tonſura monete trahe & pend.* Tr. 24 H. 8. in Juſtice Spilmans Reports, accord.

[l] Mich. 31 E. 3. coram rege. Rot. 55. Buck. within 6 yeares after making of our ſtatute.

[m] 25 E. 3. 42. b. Cor. 130. 23 Aſſ. p. 2. 22 Aſſ. p. 71. 21 E. 3. Cor. 253. 12 Aſſ. p. 11. 8 E. 2. Cor. 410.

with childe: ſo as this reſpit of execution for this cauſe is not to be granted, only in caſe of felony, whereof Juſtice Stanford ſpeaketh, but in caſe of High Treaſon, and Petit Treaſon alſo.

Stanford f. ult. b.

Vid. Hereafter, cap 30. Rot. Par. 17 E. 3. nu. 15.

¶ Si home port faux money en ceſt roialme, counterfeit au money dangliterre, & ſachant le money eſtre faux, &c.] By this branch ſix things are to be obſerved. Firſt, that the bringing in of counterfeit mony, and not the counterfeiting is expreſſed in this word [apport.] Secondly, that it muſt be brought from a forraine Nation, and not from Ireland, or other place belonging to, or being a member of the Crowne of England, and ſo it hath been reſolved, ſo wary are Judges to expound this ſtatute concerning Treaſon, and that in moſt benigne ſenſe: For albeit Ireland be a diſtinct Kingdome, and out of the Realme of England to ſome purpoſes, as to Protections and Fines levied, &c. as hath been ſaid: yet to ſome intent it is accounted as a member of or belonging to the Crowne of this Realme. And therefore a Writ of Error is maintainable here in the Kings Bench of a judgement given in the Kings Bench in Ireland, ſo as the Judges did conſtrue this ſtatute not to extend to falſe money brought out of Ireland. Thirdly, it muſt be to the ſimilitude of the money of England. Fourthly, that the bringer of it into this Realme, muſt know it to be counterfeit. Fiftly, Uttering of falſe money in England, though he know it to be falſe and counterfeit to the likeneſſe of the coyne of England, is no treaſon within this ſtatute, unleſſe he brought it from a forraine Nation, for the words be, ſi home apport faux money en ceſt realme. But if money falſe or clipped be found in the hands of any that is ſuſpicious, he may be impriſoned untill he hath found his warrant, per ſtatutum de moneta magn' vet, Mag. Cart. fo. 38. 2 parte. Laſtly, he muſt merchandize therewith, or make payment thereof, expreſſed in theſe words, Pur merchandizer, ou paiment faire in deceipt noſtre ſeignior le roy & ſon people. See more, De moneta regis, and of the derivation thereof in The ſecond part of the Inſtitutes, in Artic' ſuper cartas. cap. 20.

7 H. 7. 10.

Lib. 7. Calvins caſe, *ubi ſupra.*

3 H. 7. 10.

¶ Si home tuaſt Chancelour, Treſurer, ou Juſtice noſtre ſeigniour le roy del un banke ou del auter, Juſtice in Eire, ou daſſiſes & touts auters Juſtices aſſignes doier & terminer eſteant en lour place feaſant lour office.]

In this caſe albeit one intend to kill any of theſe here named in their place, and doing their office, and thereupon ſtrike or wound any of them, this is no treaſon: For our ſtatute ſaith, Si home tuaſt Chancelor, &c. If a man kill the Chancellour, &c. For if it be treaſon, death muſt enſue. And the reaſon wherefore it is treaſon in theſe caſes is, becauſe ſitting judicially in their places (that is, in the Kings Courts) and doing their office in adminiſtration of juſtice, they repreſent the Kings perſon, who by his Oath is bound that the ſame be done. And this Act extends only to the perſons here particularly named, and to no other: and therefore extendeth not to the Court of the Lord Steward, or of the Conſtable and Marſhall, nor to the Court of the Admiralty, or any other, nor to any Eccleſiaſticall Court; Nay, it extends not to the High Court of Parliament, if any Member of the Lords Houſe, or Houſe of Commons be ſlaine in his place, and doing his office, becauſe it is caſus omiſſus, and not mentioned in this Act. But in all thoſe Caſes it is wilfull murder, for the Law implyeth malice.

[a] Rot. Parliam. 20 E. 1, nu. 2. John de Britains caſe. 3 Reg. 21. 15. See *inter leges Alvredi*, cap. 4. *ubi ſupra. Vita & fortunis omnibus privatur.* Cuſt. de Norm. ca. 14. 22 lib. Aſſ. pl. 49.

¶ Et ſoit aſſavoire q̄ in les caſes ſuiſnomes doit eē adjudge treaſon q̄ ſe extenda a noſtre ſeignior le roy & ſa royall Majeſtie: & de tiel treaſon le forfeiture des Eſcheates appertient a noſtre ſeignior le roy cibien des trēs & tenements tenus des auters, come de luy meſme.

[a] ¶ Des trēs & tenements tenus des auters come de luy meſme.] This is an affirmance of the Common Law, and the reaſon thereof is, for that the offence is committed againſt the ſoveraigne Lord the King, who is the light and the life of the Common-wealth: and therefore the Law doth

doth give to the King in ſatisfaction of his offence, all the Lands, &c. which the offender hath, and that no ſubject ſhould be partaker of any part of the forfeiture for this offence.

And where the words be [Lands and Tenements holden, &c.] yet the forfeiture extends to * rents charges, rents ſeek, Commons, Corodies, and other hereditaments which are not holden, for in caſe of High Treaſon the tenure is not materiall.

* Brook Eſch. 9. See hereafter, *Verbo. Et de tiel maner de treaſon, &c.* Otherwiſe it is in caſe of Petit Treaſon and felony.

This clauſe hath 7. limitations. *Firſt*, this Act extends not [b] to lands in tayle, (having only for the life of tenant in tayle) but the forfeiture of eſcheats is to be underſtood of ſuch Lands and Tenements, as he might lawfully forfeit. And theſe generall words take not away the ſtatute of doris conditional' [c] but latter ſtatutes give the forfeiture of eſtates in tayle. 2. Nor doth this Act extend to uſes, but [d] latter ſtatutes doe name uſes. 3. Nor to rights of actions, where the entrie is taken away, and ſo in the law clearly holden at this day. 4. Nor to any conditions, but by a [e] latter ſtatute conditions, unleſſe they be inſeparably knit to the perſon, be given to the King. 5. Nor to rights of entry, where any was in the lands [f] by title before the treaſon committed, but ſuch a right of entry is ſince given by latter ſtatutes. 6. Nor to Lands or tenements, or Rights [g] in auter droit, as in the right of the Church, nor to lands in the right of a wife, but only during the coverture, and it extendeth to land which the offender hath [h] for life, for the forfeiture of the profits during his life. 7. It extendeth not to [i] a foundership of an houſe of religion in Fee almoign, for that is annexed to the blood of the Founder. Here goods and chattels be not named, but the forfeiture of them is implied in the judgement.

b 7 H. 4. 27. See hereafter in the title of *Prærog. Regis* [des fees, &c.] Vid. 26 H. 8. cap. 13.

c 26 H. 8. ca. 13. in fine. 33 H. 8. ca. 20. 5. & 5 E. 6. ca. 11. Lib. 7. fo. 11, 13.

d 33 H. 8. ca. 20.

e 5 E. 6. ca. 11.

f Lib. 3. fo. 210.

g 7 H. 4. 6. &c.

h 33 H. 8. c. 20. lib. 7. fo. 11. Engleſields caſe. *Vide ſupra.*

i Engleſields caſe *Vbi ſupra.*

[1] Nota Lector, the ſaid Acts of 26 H. 8. 33 H. 8. 5. and 6 E. 6. doe yet remain in force, notwithſtanding the ſaid ſtatute of 1 Mar. as it hath been often adjudged and reſolved, and namely Mich. 21 Ja. in the Exchequer Chamber in a writ of error, upon a judgement given in the Exchequer, between Ratcliffe and the Lord Sheffeild, by all the Judges of England, and is agreeable to common experience.

See more of High Treaſon in the next Chapter following, cap. 2. verbo. Et pur ceo que pluſors auters caſes, &c.

g 5 E. 6. *ubi ſupra.* 1 Mar. Dier 125. Dier. 12 El. 289. Temps H. 8. Br. Coron. 5.

h 1 Mar. Dier 168. * 24 H. 3. fo. 33. 34. Lib. 8. fo. 33. 72. Corody Br. 5. Temps H. 8. Eſcheat. 239. i 12 El. Dier 289. Lib. 3. fo. 10. 35. Lib. 7. 72. 166. lib. 9. fo. 140. Stanf. Pl. Coron. 187. 2.

CAP. II.

Of Petit Treaſon.

ET ovesque ceo il y ad un auter manner de treaſon, ceſtaſſavoir, quant un ſervant tua ſon maiſter, ou un feme tua ſon baron, ou quant home ſeculer ou de religion tua ſon prelate a que il doit foye et obedience. Et de tiel manner de treaſon la forfeiture des Eſcheats appertenont a cheſcun ſeignior de ſon fee proper, &c.

Britton ca. 8. & cap. 22.

And moreover there is another manner of Treaſon, that is to ſay, when a ſervant ſlayeth his Maſter, or a wife her husband, or when a man ſecular or religious ſlayeth his Prelate to whom he oweth faith

faith and obedience. And of such treason the Escheats ought to pertain to every Lord of his own fee, &c.

It was called High or Grand treason in respect of the royall Majesty against whom it is committed, and comparatively it is called Petit Treason (whereof now this Statute speaketh) in respect it is committed against subjects and inferiour persons, whereof this Act doth enumerate three kinds.

¶ Quant un servant tua son Maister.] This was Petit Treason by the Common Law, for so it appeareth by the [a] book of 12. Ass. that a woman servant killed her Mistris, wherefore she had judgement to be burnt, which is the judgement at this day of a woman for Petit treason. And herewith agreeth 21. E. 3. where the reader must know, that in stead of Mere in that case you must read Maister.

[a] 12 Ass. p. 30. 21 E. 3. 27. F. coron. 247. Statham 1 cor. 21 E. 3. 22 Ass. p. 49.

[b] 19 H. 6. 47. Pl. Com. 86 b. Dier 3. Mar. 128. 7 El. 235.

[c] Exodus c. 21. v. 15. 17. Lev. 20. v. 9. 1 Mar. per Bromley & Portman of the report of Justice Dalton. vid. 8 R. 3. 4. *In scales parricida cum simia, cum gallo & serpente inclusi mari olim mergebantur sed nos non habemus talem consuetudinem.*

And upon this Act, if the servant kill the wife of his Master, it is Petit treason, for he is servant both to the husband and wife.

[c] If the child commit Parricide in killing of his father or mother (which the Law-makers never imagined any childe would doe) it is case is out of this Statute, unlesse the child served the father or mother for wages, or meat, drink or apparell, for that it is none of these three kinds specified in this Law. And yet the offence is far more hainous and impious in a child then in a servant, for Peccata contra naturam sunt gravissima: but the Judges are restrained by this Act, to interpret this Act, a simili, or a minore ad majus, as hereafter shall be said. And [*] some say that Parricide was petit treason by the Common Law.

A servant of malice intended to kill his Master, and lay in wait, to doe it whilest he was his servant, but did it not till a year after he was out of service, and it was adjudged Petit treason within this Act.

* 22 H. 1. Matth. Par. 874. 33 Ass. p. 7. Ll. 1. f. 99. Shelly's case. 10 H. 6. 47. Pl. Com. 369.

¶ Un feme tua son baron.] This was petit treason by the Common Law, as it appeareth in our books. If the wife procure one to murder her husband, and he doth it accordingly, in this case the wife being absent is but accessory, and shall be hanged and not burnt, because the accessory cannot be guilty of Petit treason, where the principall is not guilty but of murder. and the [*] accessory must follow the nature of the principall: but if he that did the murder had been a servant of the husband, it had been treason in them both, and the wife should have been burnt. And so it is in the case before of a servant, and in the case hereafter of a Clerk.

[c] 25 E. 1. Coron. 38. 33. 19 H. 6. 47. See c. Pr. & Acc. Dier, 34 H. 8. 59. Dier. 16. El. 332. Saunders case. Pasch. 32 E. 3. Rot. 2. coram rege. Ph. Cliftons case.

* 40 Ass. p. 15.

If the wife and a stranger kill the husband, it is Petit treason in the wife, and murder in the stranger, and so it is in the case of the servant next before, and of the Clerk next after.

Before this Statute it was Petit treason si quis falsaverit sigillum domini sui de cujus familia fuit. Britton agreeth herewith. But these are taken away by this Act, and all other saving these, that are here expressed.

Fleta li. 1. ca. 22. Britton fo. 16.

¶ Quant home seculer ou de religion tua son prelate a que il doit foy et obedience.] This clause is understood only of an Ecclesiasticall person, be he secular or regular, if he kill his Prelate, or Superiour, to whom he oweth faith, and obedience, it is Petit Treason: and so it was at the Common Law. And Petit Treason doth presuppose a trust, and obedience in the offender, either Civill, as in the wife and servant, or Ecclesiasticall, as in the Ecclesiasticall person.

19 H. 6. 47.

Aidors, abettors, and procurers of any of these Petit Treasons, are within this Law.

40 Ass. ubi supra. & 16 El. ubi sup.

If the servant kill his Mistris, viz. his Masters wife, this is treason (as hath been said) not by equity, for that is denied as well in Petit Treason, as High Treason, but it is within the letter of this Statute, for she is a Master.

19 H. 6. 47. by all the Judges.

In High Treason there is no accessories, but all be principalls, and therefore

fore whatſoever act or conſent will make a man acceſſory to a felony, before the act done, the ſame will make him a principall in caſe of High Treaſon. But in caſe of Petit Treaſon, there may be acceſſories, either before, or after the act done, as in caſe of Murder or Homicide.

Here it appeareth that Acts of Parliament may bind men of the Church Secular, or Regular, and no benefit of Clergy allowed unto them in caſe of treaſon: but [a] hereof you ſhall read at large in the Expoſition of the 15. chapter of Articuli cleri.

[a] See the 2. pt of the Inſtitutes. Artic. cleri. ca. 15. Hil. 3 R. 2. coram rege Rot. 8. London Jo. Imperials caſe.

¶ Et de tiel manner de treaſon forfeiture des Eſcheats apperteinont a cheſcun ſeignior de ſon fee proper.] See hereof hereafter in the chapter of Forfeiture. [b] If a man ſeiſed in fee of a Fair, Parket, Common, rent, charge, rent-ſeck, Warren, Conrody, or any other inheritance, that is not holden, and is attainted of felony, the King ſhall have the profits of them during his life: but after his deceaſe, ſeeing the blood is corrupted, they cannot deſcend to the heir, * nor can they eſcheat becauſe they be not holden, they periſh and are extinct by Act in law: For in Eſcheats for Petit Treaſon or Felony, a tenure is requiſite, as well in the caſe of the King, as of the ſubject.

For Eſchears ſee the 1. part of the Inſtitut. Sect. 1. fo. 13. 2.

[b] See before ca. 1. verbo, Des terres & tenements, &c.

* See 1. pt of the Inſtitutes fo. 13. verb. Avera la terre per eſcheat. Mic. 4 H. 4. coram rege. Rot. 22. Anglia.

An Approver in caſe of felony, refuſing the combate with the Appellee, ſhall have like judgement that is for Petit Treaſon, Probator recuſans duellum adjudicetur ſuſpendi, & trahi in odium falſæ accuſationis: but yet it is not Petit Treaſon, becauſe it is none of the three ſpecified in this Act.

The caſe which Shard reciteth in 40 Aſſ. that a Norman being Leader of an Engliſh ſhip, who had Engliſh men with him, and robbed divers upon the ſea, and were taken and found guilty: and as to the Norman it was but felony (becauſe Normandy was loſt by King John, and was out of the ligeance of E. 3.) and as to the Engliſh it was adjudged treaſon, and the offenders drawn and hanged, which was the judgement of Petit Treaſon: but this muſt be intended to fall out before this ſtatute of 25 E. 3. for it is none of the Petit Treaſons mentioned in this Act.

40 Aſſ. 24. Vide 2 H. 5. cap. 6.

¶ Et pur ceo que pluſors auters caſes de ſemblables treaſon purront eſcheer en temps a vener, queux home ne purra penſer ne declarer en preſent: Aſſentu eſt, que ſi autre caſe ſuppoſe treaſon, que neſt eſpecifie paramount, avienge de novel devant aſcun Juſtice, demoerge le Juſtice ſans alter a judgment de treaſon, tanque per devant noſtre ſeignior le roy en ſon Parliament ſoit le caſe mere & declare, le que le ceo doit eſtre adjudge treaſon, ou auter felony.

Rerum progreſſus oſtendunt multa quæ initio provideri non poſſunt.

And becauſe that many other like caſes of treaſon may happen in time to come, which a man cannot think nor declare at this preſent time: It is accorded, that if any other caſe ſuppoſed treaſon, which is not above ſpecified, doth happen before any Juſtice, the Juſtice ſhall tarry without going to judgement of the treaſon, till the caſe be ſhewed and declared before the King and his Parliament, whether it ought to be judged treaſon or other felony.

¶ Semblable treaſon.] In this caſe, the Judges ſhall not judge à ſimili, or by equity, argument, or inference of any treaſon, High or Petit, for no like caſe ſhall be adjudged treaſon, &c. And note this branch extendeth (as hath been ſaid) to the offence, viz. treaſon, and not to tryall, judgement, or execution.

¶ Si auter caſe ſuppoſe treaſon.] No other caſe, though of as high or higher nature, &c. ſhall be adjudged treaſon, High or Petit, as before it appeareth in the caſe of Paricide, Anno 1 Mariæ, ubi ſupra.

¶ Treaſon.] Either High Treaſon, or Petit Treaſon, ſo as this branch extendeth as hath been ſaid to the offence of treaſon only.

¶ Que neſt ſpecifie paramount.] This word [ſpecifie] is to be ſpecially obſerved, for it is as much to ſay, as particularized, or ſet downe particularly: ſo as nothing is left to the conſtruction of the Iudge, if it be not ſpecified and particularized before by this Act. A happy ſanctuary or place of refuge for Iudges to flye unto, that no mans blood and ruine of his family do lie upon their conſciences againſt law. And if that the conſtruction by arguments à ſimili or à minori ad majus had been left to Iudges, the miſchiefe before this ſtatute would have remained, viz. diverſity of opinions, what ought to be adiudged treaſon, which this ſtatute hath taken away by expreſſe words: and the ſtatute of 1 Mar. doth repeale all treaſons, &c. but only ſuch as be declared and expreſſed in this Act of 25 E. 3. wherein this word [expreſſed] is to be obſerved.

See the expoſition upon the ſtatute *De frang. priſonam.* 1 H. 6. 5. 9 E. 4. 26, &c. See 1 Mar. of Iuſtice Daliſons Report, ubi ſupra.

1 Mar. cap. 1.

In the Parliament holden Anno 5 H. 4. the Earle of Northumberland came before the King and Lords in Parliament, and by his Petition to the King, acknowledged to have done againſt his allegiance: and namely, for gathering of Power and giving of Liveries, whereof he prayeth pardon: and the rather, that upon the Kings Letters he yeelded himſelfe, and came to the King unto Yorke, where he might have kept himſelfe away. The which Petition the King delivered to the Iuſtices, by them to be conſidered. Whereupon the Lords made proteſtation, that the order thereof belonged to them, as Peers of the Parliament, to whom ſuch judgement belonged in weighing of this ſtatute of 25 E. 3. &c. and they judged the ſame to be no treaſon, nor felony, but only treſpaſſe finable at the Kings will. And the opinion in 27 Aſſ. is denied, that if one of the Indicters diſcover the counſell of the King, that it ſhould be treaſon; becauſe it is not ſpecified before in this Act, and therefore neither High Treaſon, nor Petit Treaſon.

Rot. Parl. 5 H. 4. nu. 11, 12. See nu. 15 Ibid.

27 Aſſ. p. 63.

¶ Tanque per devant le roy & ſon Parliament.] By this it is apparent, that any like or other caſe ought to be declared by the whole Parliament, (and not by the King and Lords of the Upper-houſe only, or by the King and the Commons, or by the Lords and Commons.) And ſo was it done by the whole Court of Parliament in 3 R. 2. ubi ſupra. 5 Eliz. 18 Eliz. ubi ſupra, and many other Acts of Parliament.

John Duke of Owyen and of Lancaſter, Steward of England, and Thomas Duke of Gloceſter, Conſtable of England, the Kings Uncles, complained to the King, that Thomas Talbot Knight, with other his adherents, conſpired the death of the ſaid Dukes in divers parts of Cheſhire, as the ſame was confeſſed and well known, and prayed that the Parliament might judge of the fault; (which Petition was juſt, and according to this branch of the ſtatute of 25 E. 3.) but the Record ſaith further: whereupon the King and Lords in the Parliament adjudged the ſame fact to be open and High Treaſon: which judgement wanting the aſſent of the Commons, was no declaration within this Act of 25 E. 3. becauſe it was not by the King and his Parliament according to this Act, but by the King and Lords only.

Rot. Par. 17. R. 2. nu. 20.

¶ Soit le caſe monſtre & declare, &c.] This Declaration may be abſolute, or ſub modo, for a time.

13 El. cap. 1, 2. 14 El. ca. 1, 2, &c.

By this which hath been ſaid it manifeſtly appeareth, what damnable and damned opinions thoſe were concerning High Treaſon, of Treſilian Chiefe Iuſtice of the Kings Bench, Sir Robert Belknap Chiefe Iuſtice of the Common Bench, Sir John Holt, Sir Roger Fulthorp, and Sir William Burghe, Knights, fellowes of the ſaid Sir Robert Belknap, and of John Lockton one of the Kings Serjants, that were given to King R. the 2. at Nottingham, in the Eleventh peare of his reigne. But more deteſtable were the opinions of the Iuſtices in 21 R. 2. and of Hanckford and Brinchley the Kings Serjeants, (and the rather, becauſe they took no example by the puniſhment of the former) which affirmed the ſaid opinions to be good and lawfull, ſaving Sir William Thirning

Anno 21. R. 2. in Latin.

1 R. 2. ca. 1. & 4.

Chiefe

Chiefe Juſtice of the Common Bench gave this anſwer: That declaration of treaſon not declared belongeth to the Parliament; but to pleaſe, he ſaid, that if he had been a Lord or a Peer of Parliament, if it had been demanded of him, he would have made the like anſwers. Theſe Juſtices and Serjeants being called in queſtion in the Parliament holden Anno 1 H. 4. for their ſaid opinions, anſwered (as divers Lords Spirituall and Temporall did) that they durſt no otherwiſe do, for feare of death. It was thereupon enacted, that the Lords Spirituall and Temporall, or Juſtices, be not from thenceforth received to ſay, that they durſt not for feare of death to ſay the truth. Which opinions being ſo manifeſtly againſt our ſaid Act of 25 E. 3. afterwards in the Parliament holden 1 H. 4. it is affirmed by authority of Parliament, that in the ſaid Parliament of 21 R. 2. divers Statutes, Judgements, Ordinances, and Stabliſhments were made, ordained, and given, erroneouſly and dolefully in great diſheriſon and finall deſtruction and undoing of many honourable Lords, and other liege people of this Realm, and of their heires for ever. And therefore not only that Parliament of 21 R. 2. and the circumſtances and dependances thereupon, are wholly reverſed, revoked, voided, undone, repealed, and annulled for ever, but alſo the Parliament holden in 11 R. 2. by authority of which Parliament, Treſilian, Belknap, and the reſt of thoſe falſe Juſtices and Serjeants aforeſaid were attainted, is confirmed, for that it was (as there the Parliament affirmeth) for the great honour and common profit of the Realm.

Rot. Parl. 1 H. 4. nu. 97.

Melius eſt omnia mala pati quam malo conſentire.

1 H. 4. ca. 3.

See the conſequence of erroneous opinions in caſe of high treaſon.

1 H. 4. ca. 4.

¶ Et ſi per caſe aſcun home de ceſt roialme chivache armee, &c.] And if percaſe any man of this Realm ride armed, &c. For expoſition hereof, ſee the Chapter hereafter againſt riding or going armed.

For the better inſtruction of the Reader to diſcerne what offences be High Treaſon or Petit Treaſon at this day, it ſhall be neceſſary to adde hereunto the ſtatute of 1 Mar. whereby it is enacted, [That no Act, Deed or Offence, being by Act of Parliament or Statute made treaſon, petit treaſon, or miſpriſion of treaſon, by words, writing, ciphering, deeds, or otherwiſe whatſoever, ſhall be taken, had, deemed, or adjudged to be High Treaſon, Petit Treaſon, or miſpriſion of treaſon, but only ſuch as be declared and expreſſed to be treaſon, petit treaſon or miſpriſion of treaſon, in or by the Act of Parliament or Statute made in the 25 yeare of the raigne of the moſt noble King of famous memory, King Edward the third, touching or concerning treaſon, or the declaration of treaſon, and none other &c. Any Act or Acts of Parliament, Statute, or Statutes, had or made at any time heretofore or after the ſaid 25 year of King E. 3. or any other declaration or matter to the contrary in any wiſe notwithſtanding.]

1 Mar. ca. 1. *Seſſione prima.* The like ſtature was made, *Anno* 1 E. 6. ca. 12. See the ſtature of 1 H. 4. ca. 10. to the like effect.

Inter leges Canuti cap. 7. *Inprimis juſtæ leges ut efferantur, injuſtæ deprimentur.* Aliter in antiquo MS. *Inprimis ut juſtæ leges erigantur, injuſtæ ſubvertuntur.*

Before this Act ſo many treaſons had been made and declared by Act of Parliament ſince this Act of 25 E. 3. ſome in particular, and ſome in generall, and in ſuch ſort penned, as not only the ignorant and unlearned people, but alſo learned and expert men were many times trapped and ſnared: and ſometimes treaſons made or declared in one Kings time, were abrogated in another Kings time, either by ſpeciall or general words: ſo as the miſchief before 25 E. 3. of the uncertainty what was treaſon, and what not, became to be ſo frequent and dangerous, as the ſafeſt and ſureſt remedy was, by this excellent Act of 1 Mar. to abrogate and repeale all, but only ſuch as are ſpecified and expreſſed in this ſtatute of 25 E. 3. By which law, the ſafety both of the King and of the ſubject, and the preſervation of the Common-weale is wiſely and ſufficiently provided for, in ſuch certainty, as nihil relictum eſt arbitrio Judicis. And certainly the two Rules recited in the Preamble of the ſaid Act of 1 Mariæ, are aſſuredly true. The firſt, [That the ſtate of a King ſtandeth and conſiſteth more aſſured by the love and favour of the ſubject toward their Soveraigne, then in the dread and fear of lawes made with rigorous paine and extream puniſhment for not obeying their Soveraigne.] And the other, [That lawes juſtly made for the preſervation of the Common-weale without extreme puniſhment or penalty, are more often, and for the moſt part better obeyed and kept, then lawes and ſtatutes made

Seneca. with great and extreme puniſhment.] Mitiùs imperanti melius paretur.

In which Act five notable things are to be obſerved. Firſt, it extendeth (without exception) to all High Treaſons made by any Act of Parliament ſince the ſaid Act of 25 E.3. Secondly, to all declarations of High Treaſons by any Act of Parliament ſince the ſaid Act of 25 E.3. (as of the ſaid Declaration in 3 R.2. of killing an Ambaſſadour and the like.) Thirdly, to all Petit Treaſons made or declared by any Act of Parliament ſince the ſaid Act of 25 E.3. Fourthly, albeit miſpriſion of treaſon is not mentioned in the Act of 25 E.3. yet every miſpriſion of any treaſon made or declared ſince that Act by any Act of Parliament is abrogated. Fifthly, no offence to be treaſon, petit treaſon or miſpriſion of treaſon, but only ſuch as be declared and expreſſed to be treaſon, petit treaſon, or miſpriſion of treaſon by the ſaid Act of 25 E.3. Here three things are to be obſerved: Firſt, that this word [expreſſed] excludeth all implications or inferences whatſoever. Secondly, here miſpriſion of treaſon is taken for concealement of high treaſon or petit treaſon, and only of high treaſon or petit treaſon ſpecified and expreſſed in the Act of 25 E.3. Thirdly, that no former judgement, attainder, preſident, reſolution, or opinion of Judges or Juſtices of high treaſon, petit treaſon, or miſpriſion of treaſon, other then ſuch as are ſpecified and expreſſed in the ſaid Act of 25 E.3. are to be followed or drawne to example: for the words be direct and plaine, [That from henceforth, no Act, Deed, or Offence, &c. ſhall be taken, had, deemed, or adjudged to be treaſon, petit treaſon, or [a] miſpriſion of treaſon, but only ſuch as be declared and expreſſed in the ſaid Act of 25 E.3. &c. any Act of Parliament or Statute after 25 E.3. or any other declaration or matter to the contrary notwithſtanding.] ſo as there is no high treaſon, petit treaſon, or miſpriſion of any treaſon made or declared by any Act of Parliament or otherwiſe ſince the Act of 25 E.3. but only ſuch as have been made ſince the ſaid Act of 1 Mariæ, and of thoſe, only ſuch as were made [b] perpetuall, and not during the life of Queen Mary or of Queen Elizabeth, whereof there be divers which now are expired, which you may read being all in print. But there wanted nothing to the perfection of the Statute of 25 E.3. but a limitation of ſome certaine time wherein the offender ſhould be accuſed. [c] Poſt intervallum temporis accuſator non erit audiendus, niſi docere poteſt ſe fuiſſe juſtis rationibus impeditum.

¶ Or the declaration of treaſon &c. [d] Declarations made during the naturall life of Queen Elizabeth ceaſed by her death: for Declarations may have limitations as well as Statutes introductory of new lawes.

There is an other excellent branch of a Statute made [e] in 1 & 2 Ph. & Mar. in theſe words. [And be it further enacted by the authority aforeſaid, that all trials hereafter to be had, awarded, or made for any treaſon, ſhall be had and uſed only according to the due order and courſe of the Common Law.]

¶ All trials.] [f] Upon theſe words many things have been obſerved by others. Firſt, that the Letter of this Act extendeth only to triall of high treaſons, or petit treaſons, and not to miſpriſion. Secondly, Forraine treaſons are to be tried by the Statute [g] of 35 H.8. cap. 2. and ſo it was reſolved by all the Juſtices of England in Orurks Caſe, and had been ſo reſolved before. But for trials of treaſons to be had in Wales, or where the Kings Writ runneth not, in ſuch Shires as the King ſhall aſſigne by his Commiſſion by the [*] ſtatute of 32 H.8. ca.4. are abrogated by this Act, becauſe they are triable by the law.

[h] It hath been holden, that upon the triall of miſpriſion of treaſon there muſt be two lawfull witneſſes, as well upon the triall, as upon the indictment, as it was reſolved by the Juſtices in the Lord Lumleyes Caſe, Hil. 14. Eliz. reported by the Lord Dier, under his own hand, which we have ſeen, but left out of the print, which for other purpoſes is cited hereafter. Thirdly, it hath been holden, that this Act extendeth not to the Indictment of any treaſon, but to the triall by Peers, if the offender be noble: or by Free-holders, if the offender be under the degree of nobility: and therefore upon the indictment which is in manner of an accuſation

[a] That is, of ſuch treaſon, high or petit, as is expreſſed in the Act of 25 E.3. and of no other treaſon.
[b] 1 Mar.ca.6. 1 & 2 Ph.& Mar. cap.11. 5 Eliz.ca.1. & 11 18 Eliz.cap.1. 13 Eliz.cap.2. 23 Eliz.cap.1. 27 Eliz.ca.2. 3 Jac.cap.4.
[c] Bracton lib.3. fol.118 b.
[d] 13 Eliz. cap.1. 14 Eliz.cap.1.& cap.2.
[e] 1 & 2 Ph.& M. cap.10.
[f] See the ſecond part of the Inſtitutes. Mag. Carta.cap.29. Verbo (per judicium parium.)
[g] 35 H.8.ca.2. 3 Mar.Dier 132. lib.7.fo.23.in Calvins caſe. Paſch.33 Eliz. Orurks caſe.
[*] 32 H.8 cap.4.
[h] 1 E.6.ca.12. 5 E.6.ca.11. Both which are mentioned in the next Section. Hill.14.Eliz. Dier M S. *Nota.* This is the laſt reſolution of the Judges in this point. At this time *Catlin* and *Dier* were Chiefe Juſtices, and *Sanders* Chiefe Baron, &c.

accuſation, by the ſtatutes of 1 E. 6. and 5 E. 6. two lawfull witneſſes are requiſite: the words of the ſtatute of 1 E. 6. in the laſt branch be, [That none ſhall be indicted, arraigned, condemned, or convicted for any treaſon, Petit Treaſon, miſpriſion of treaſon, or for any words before ſpecified to be ſpoken, after the ſaid firſt day of February, for which the ſame offender or ſpeaker ſhall in any wiſe ſuffer paine of death, impriſonment, loſſe or forfeiture of his goods, chatels, lands, or tenements, unleſſe he be accuſed by two ſufficient and lawfull witneſſes, or ſhall willingly without violence confeſſe the ſame.] 1 E. 6. cap. 12. 5 E. 6. ca. 11. See 13 El. ca. 1. See before *Verb.* [*De eo prevable-ment ſois attaint.*]

Nota that [before ſpecified] doe refer to the words mentioned before in the Act. 1. It is manifeſt by the connexion of the words, viz. [for any words before ſpecified to be ſpoken, &c.] 2. The treaſons in 25 E. 3. were mentioned before. 3. The firſt words be [for any treaſon, Petit treaſon, miſpriſion of treaſon, &c.]

And by 5 E. 6. ca. 11. it is provided by the laſt clauſe ſave one, [That none ſhall be indicted, arraigned, condemned, convicted, or attainted for any of the treaſons or offences aforeſaid, or for any * other treaſons that now be, or hereafter ſhall be, which ſhall hereafter be perpetrated, committed, or done, unleſſe the ſame offender be thereof accuſed by two lawfull accuſers, &c. unleſſe the ſaid party arraigned ſhall willingly, without violence confeſſe the ſame.] Here two things are to be obſerved. 1. The particular penning of both theſe Acts, viz. indicted, arraigned, convicted, &c. and the words of 1 & 2 of Ph. & Mar. extend to trials only, and not to the indictment. 2. Two lawfull accuſers in the Act of 5 E. 6. are taken for two lawfull witneſſes, for by two lawfull accuſers, and accuſed by two lawfull witneſſes (as it is ſaid 1 E. 6.) is all one: which word [accuſers] was uſed, becauſe two witneſſes ought directly to accuſe, that is, charge the priſoner, for other accuſers have we none in the Common Law: and therefore lawfull accuſers muſt be ſuch accuſers as Law allow. And ſo was it reſolved in the Lo. Lumleys caſe by the Juſtices: for if accuſers ſhould not be ſo taken, then there muſt be two accuſers, by 5 E. 6. and two witneſſes by 1 E. 6. And the ſtrange conceit in 2 Mar. that one may be an accuſer by hearſay, was utterly denied by the Juſtices in the Lo. Lumleys caſe. And this word [awarded] in the ſtatute of 1 & 2 Ph. & Mar. extendeth to the tryall upon the arraignment, and not to the indictment, for that is not ſaid to be awarded. See 1 El. ca. 6. Stant. Pl. Coron. 89. & 164. 4 Mar. Coron. Br. 220. Dier. 2 Mar. 99. & 3 Mar. 132. * Nota the generality of theſe words. *Regula. Verba generalia generaliter ſunt intelligenda.* See hereafter c. 49. of Piracy, &c. Hil. 14. El. Lo. Lumleys caſe. Ubi ſupra. 2 Mar. Dier 99. 100. Thomas Caſe.

And it was reſolved by all the Juſtices in [a] Roſſtons caſe upon the rebellion in the North, that theſe words [ſhall willingly without violence confeſſe the ſame] are to be underſtood where the party accuſed upon his examination before his arraignment, willingly confeſſed the ſame without violence, that is, willingly without any torture: and is not meant of a confeſſion before the Judge, for he is never preſent at any torture, neither upon his arraignment was ever any torture offered. And here commeth another [b] ſtatute made in 1 & 2 Mar. to be conſidered, by which it is provided, that treaſon for the counterfeiting and impairing of the coin current in this Realm, &c. the offender therein, &c. ſhall be indicted, arraigned, tried, convicted, or attainted by ſuch like evidence, and in ſuch manner and forme, as hath been uſed and accuſtomed within this Realm, at any time before the firſt year of King E. 6. &c. Wherein the ſpeciall penning of this Act is to be obſerved, which in caſe of treaſon concerning the counterfeiting or impairing of coin, &c. hath by particular words reſtored the evidence requiſite by the Common Law, before the ſtatute of 1 E. 6. as well upon the indictment as the triall. But the Act of 1 & 2 Ph. & Mar. cap. 10. extends to trialls only in other caſes of High Treaſon, and therefore that Act extendeth not to the indictment of other High treaſons. Alſo it is moſt neceſſary (as many doe hold) that there ſhould be two lawfull accuſers, that is, two lawfull witneſſes at the time of the indictment, for that it is commonly found in the abſence of the party accuſed, and it may be when the party ſuſpected is beyond ſea, or in remote parts, and may be outlawed thereupon; and therefore ſeeing the indictment is the foundation of all, it is moſt neceſſary to have ſubſtantiall proof in a cauſe ſo criminall, where probationes oportent eſſe luce clariores. [a] Mich. 13 & 14 El. Roſſtons caſe. [b] 1 & 2 Ph. & Mar. c. 11. ſupra. 1 & 2 Ph. & Ma. cap. 10.

Laſtly

Laſtly, if the indictment were part of the tryall, then ought he that is noble, and a Lord of Parliament, be indicted of High Treaſon, &c. by his Peers: For the tryall of him (without queſtion) muſt be by his Peers: but the indictment of Peers of the Realm is always by Free-holders, and not by their Peers, as hereafter ſhall appear. We have been the longer herein in reſpect of ſome variety of opinion (for want of due and intire conſideration had of all and every part of that which hath been ſaid) upon ſerious ſtudy touching this point, without reſpect of a common wandring opinion.

See Magna Cart. c.29. and the expoſition thereupon.

And it ſeemeth that by the ancient Common law one accuſer, or witneſſe was not ſufficient to convict any perſon of High Treaſon: [a] For in that caſe, where is but one accuſer, it ſhall be tried before the Conſtable and Marſhall by Combat, as by many records appeareth. [b] But the Conſtable and Marſhall have no juriſdiction to hold plea of any thing, which may be determined or diſcuſſed by the Common Law. And that two witneſſes be required, appeareth by our [c] books, and I remember no authority in our books to the contrary: and the Common law herein is grounded upon the law of God expreſſed both in the old and new Teſtament: [d] In ore duorum aut trium teſtium peribit qui interficietur: Nemo occidatur uno contra ſe dicente teſtimonium.

a Par. 25 E. 3. part. 1. nu. 16. Rot. Parl. 21 R. 2. nu. 19. 21. the D. of Norff. caſe. Rot. Pat. 3 H. 4. Belleſhuls caſe. Rot. Vaſcon. 9 H. 4. nu 14. John Bolemers caſe. Rot. Parl. 2 H 6. nu. 9. the Earl of Ormonds caſe. Rot. Pat. 8 H. 6. pt. 2. m. 7. between Upton and Dowy. Vide the 4. part of the Inſtitutes. cap. the Court of Chivalry &c. See Bract lib. 3. fo. 119. a.

b 13 R. 2. ca. 2.

c Mirror ca. 3. §. ordenance de attaint. Bract. l. 5. f. 354. 48 E. 3. 30. 35 H. 6. 46. Fort. ca. 32. 15 E. 4. f. 1. Pl. Com. fo. 8.

d Deu. 17. 6. 19. 15. Mat. 18. 16. John 18. 23. 2 Cor. 13. 1. Heb. 10. 28.

And it ſeemeth to be the more clear in the triall by the Peers, or Nobles of the Realm, becauſe they come not de aliquo vicineto, whereby they might take notice of the fact in reſpect of vicinitie, as other Jurors may doe.

Having now rehearſed what others have ſaid and holden, we upon due conſideration had of the whole matter will ſet down our own opinion, and reaſons, in theſe Four points following. Firſt, that the ſtatute of [e] 5 E. 6. cap. 11. is a generall law, and extends to all High treaſons, as well by the Common Law declared by the ſtatute of 25 E. 3. as to any other ſtatute made or to be made, the negative words of which ſtatute be: [No perſon ſhall be [f] indicted, arraigned, convicted, condemned, or attainted for any treaſon, that now is, or hereafter ſhall be, &c.] Which words without all queſtion are generall, and ſo to be taken. The words of that ſtatute be further, [Unleſſe the ſame offender be accuſed by two lawfull accuſers.] Theſe two lawfull accuſers are in judgement of law taken for two lawfull witneſſes, and that for two cauſes: Firſt, they muſt be lawfull, that is, allowed by the Laws of the Realm: and by the law, upon the arraignment of the Priſoner upon the indictment of treaſon, no other accuſer can be heard, but witneſſes only. Secondly, the words of the ſtatute are [Which ſaid accuſers at the time of the arraignment of the party accuſed, if they be then living, ſhall be brought in perſon before the party ſo accuſed, and avow, and maintain that which they have to ſay to prove him guilty of the treaſon, unleſſe the party arraigned ſhall willingly without violence confeſſe the ſame,] as by that Act it appeareth. Now to avow and maintain that which they have to ſay, to prove him guilty of the treaſon, is the proper office and duty of witneſſes, and ſo it is ſaid in the ſtatute of [g] 1 E. 6. c. 12. in the laſt clauſe (by two lawfull witneſſes.) See the ſtatute of 5 El. c. 1. where it is ſaid [accuſed by good and ſufficient teſtimony:] and to the ſame intent, the ſtatute of 1 & 2 Ph. & Mariæ ca. 11. for the word [accuſed.]

e And ſo I hold the ſtatute of 1 E. 6. c. 12. to be a generall Law, and to extend to all high treaſons, &c.

f Nota as well upon the indictment as the arraignment of treaſon there ought to be two accuſers. See Dier 2 & 3 Ph. & Mar. 132.

g 1 E. 6. ca. 12. the laſt clauſe. 5 El. ca. 1. 1 & 2 Ph. & Mar. ca. 11. Bract. li. 3. f. 118. *Qui accuſat integræ famæ ſit, & non criminoſus.* 3 Stat. de Kenelw. ſecunda parte Ver. Mag. Cart. cap. 16.

1. Puniantur accuſatores penes dominum regem, quod amodò Rex eis de facili non credat: & talis pœna fiat eis, qualis debeat fieri illis, qui injuſte fideles dñi regis exhæredari & deſtrui fecerunt, &c.

2. That this Act of 5 E. 6. extend as well to Petit Treaſon, as High Treaſon, for the words be [any treaſon:] and ſo doth the ſtatute of 1 E. 6. ca. 12.

3. That the ſtatute of 1 & 2 Ph. & Mar. cap. 10. doth not abrogate the ſaid Act of 1 E. 6. or of 5 E. 6. For that Act of 1 & 2 Ph. & Mar. extends only to trialls by the verdict of twelve men de vicineto, of the place where the offence is alleadged, and [k] the indictment is no part of the triall, but an information or declaration for the King, and the evidence of witneſſes to the Jury is no part of the triall, for by law the tryall in that caſe is not by witneſſes, but by the ver-

k See the firſt part of the Inſtitutes. Sect. 194. See Forteſcue ca. 26, 27. Juries ought to be informed by evidences, and witneſſes.

dict

dict of twelve men, and ſo a manifeſt diverſity between the evidence to a Jury, and a tryall by Jury. And the word [awarded] in that ſtatute doth prove that that Act extended only to the Venire facias for triall, for neither the indictment nor the evidence can be ſaid to be awarded: Veritas quæ minime defenſatur, opprimitur, & qui non improbat, approbat. Et ſic libere animam meam liberavi.

[a] The trial againſt an Alienee, that lived here under the protection of the King, & amity being between both Kings, for High treaſon, ſhall by force of this Act of 1 & 2 Ph. & Mar. be tried according to the due courſe of the Common Law, and therefore in that caſe he ſhall not be tried per medietatem linguæ, as he ſhall be in caſe of Petit Treaſon, murder, and felony, if he prayeth it.

4. [b] That a triall in a forein county upon examination before three of the Councell, &c. by the ſtatute of 33 H. 8. cap. 23. is abrogated by this Act of 1 & 2 Ph. & Mar. being a tryall contrary to the due courſe of the Common Law, which is to have it tryed by Jurours of the proper County, [c] but the indictment being found in the proper County, it may be by ſpeciall commiſſion heard and determined before Commiſſioners in any forein County, but the tryall muſt be by Jurours of the proper County; and this is warranted by the courſe of the Common Law. And albeit when the Term begins, all Commiſſions of Oier and Terminer in the county where the Kings Bench ſit, be ſuſpended during the Term, yet if an Indictment be found before ſuch Commiſſioners before the tearm, there may be a ſpeciall commiſſion made to commiſſioners in the ſame county, ſitting the Kings Bench in that county, to heare and determine the ſame during the tearm: for the Kings Bench hath no power to proceed thereupon, till the indictment be before them. And it is the better, if the ſpeciall commiſſion bear Teſte after the beginning of the tearm. Note a diverſity between generall commiſſions of Oier and Terminer, and ſuch a ſpeciall commiſſion; and the Court of Kings Bench may be adjourned, and in the mean time the Commiſſioners may ſit there.

[d] And where it is provided by the ſtatute of 33 H. 8. cap. 23. that peremptory challenge ſhould not from thenceforth be admitted or allowed in caſes of High Treaſon or miſpriſion of treaſon: [e] This branch is abrogated by the ſaid Act of 1 Mar. For the end of challenge is to have an indifferent tryall, and which is required by law; and to bar the party indicted of his lawfull challenge, is to bar him of a principall matter concerning his tryall: and all Acts of Parliament concerning incidents to tryalls contrary to the courſe of the Common law, are abrogated by the ſaid words, [and that all trialls hereafter, &c.] but all this is to be underſtood of perſons under the degree of Nobility; For in caſe of a triall of a Noble man, Lord of Parliament, he cannot challenge at all any of his Peers.

[f] Henry Garnet Superiour of the Jeſuites in England upon his arraignment for the Powder Treaſon, did challenge Burrell a Citizen of London peremptorily, and it was allowed unto him by the reſolution of all the Judges: [g] So as in caſe of High Treaſon, or miſpriſion of High Treaſon, a man may challenge 35. peremptorily, which is under three Juries, but more he cannot.

Laſtly, all ſtatutes made before the ſaid Act of 1 & 2 Ph. & Mar. for tryall of High Treaſon, Petit Treaſon, or miſpriſion of Treaſon, contrary to the due courſe of the common law, are abrogated by the ſaid Act of 1 & 2 Ph. & Mar. and tryalls by the due courſe of the common law, with challenges incidents in thoſe caſes are reſtored.

[h] If a man be indicted of High Treaſon, he may at this day plead a forein plea, as he might doe by the common law, and ſhall be tryed in the forein county: but otherwiſe it is in caſes of Petit Treaſon, murder, or felony, for there it ſhall be tryed in the county where the indictment is taken.

And forasmuch as the proceeding againſt a noble Peer of the Realm, being a Lord of Parliament in ſome points agrees, and in other points differeth from the proceeding againſt a ſubject under the degree of a Nobility: It ſhall be neceſſary to ſhew wherein they agree, and wherein they differ.

1. The

[a] 27 E. 3. ca. 8. 28 E. 3. ca. 18. 8 H. 6. ca. 29. 1 Mar. fo. 144. Shirleys caſe, & ſo it was reſolved by all the Judges Hil. 36 El. in the caſe of Doctor Lopez, Emanuel Loyſie, and Stephen Ferreira de Gama.

[b] 33 H. 8. c. 23. 3 Mar. Dier 132. Dier 12 El. 286. b. li. 11. fo. 63 a. in Doctor Hoſters caſe.

[c] 27 Aſſ. p. 1. 21 Aſſ. p. 12. W. 1. c. 3. &c. Mic. 25 & 26 El. per les Juſtices in Somervile and Ardens caſe. Dier 12 El. 286. b. All this was reſolved Mic. 1. Ja. in Sir Walter Raleighs caſe. Pl. Com. 388. Count de Leiceſters caſe.

[d] 33 H. 8. c. 23.

[e] And ſo it was reſolved, An. 1 Ja. in Sir Walter Raleighs caſe, by all the Judges and had been reſolved ſo before, Stan. pl. cor. 157.

[f] Ja. R. in Garnets caſe. And ſo was it reſolved M. 25 & 26 El. in Somervile & Ardens caſe.

[g] Br. tit. Challenge 217.

[h] 22 H. 8. c. 14. 32 H. 8. c. 3. See 4 H. 1. c. 2. and 22 H. 8. c. 2. pleading &c. for being taken out of Sanctuary in a forain county in caſe of murder or felony. See hereafter. ca. Sanctuary, all Sanctuaries taken away: & note that the ſtat. of 22 H. 8. &c. extēd only to Indictments and not to Appeals.

1 H.4.1. 1. The Noble Peer of the Realme muſt be indicted before Commiſſioners of Oier and Terminer, or in the Kings Bench, if the treaſon, miſpriſion of treaſon, felony, or miſpriſion thereof be committed in that County where the Kings Bench ſit, as it was reſolved in the caſe of Tho. D. of N. in An. 13. Eliz. And this is common to both degrees to be indicted by Iurors of that County where the offence was committed.

1 H.4.1. 10 E.4.6.b. 13 H.8.12. 2. When he is indicted, then the King by his Commiſſion under the Great Seale conſtitutes ſome Peer of the Realme, to be hac Vice, Steward of England: For his ſtile in the Commiſſion is, [Seneſchallus Angliæ] who is Iudge in this caſe of the treaſon or felony, or of the miſpriſion of the ſame committed by any Peer of the Realme. This Commiſſion reciteth the Indictment generally as it is found: and power given to the Lord Steward to receive the Indictment, &c. and to proceed, Secundum legem & conſuetudinem Angliæ. And a commandement is given thereby to the Peers of the Realme, to be attendant and obedient to him: and a commandement to the Lieutenant of the Tower to bring the priſoner before him.

3. A Certiorari is awarded out of the Chancery to remove the indictment it ſelfe before the Steward of England indilatè, which may either beare date the ſame day of the Stewards Commiſſion, or any day after.

4. The Steward directs his precept under his ſeale to the Commiſſioners, &c. to certifie the indictment ſuch a day and place.

5. Another Writ goeth out of the Chancery directed to the Lieutenant of the Tower, to bring the body of the priſoner before the Steward at ſuch day and place as he ſhall appoint.

6. The Lord Steward maketh a precept under his ſeale to the Lieutenant of the Tower, &c. and therein expreſſeth a day and place when he ſhall bring the priſoner before him.

7. The Steward maketh another precept under his ſeale to a Serjeant at Armes, to ſummon Tot & tales dominos, magnates, & proceres hujus regni Angliæ prædicti R. Comitis E. pares, per quos rei veritas melius iciri poterit, quòd ipſi perſonaliter compareant coram prædicto Seneſchallo apud Weſtm. tali die & hora, ad faciend. ea quæ ex parte domini Regis forent facienda, &c. Wherein Four things are to be obſerved. Firſt, that all theſe precepts moſt commonly beare date all in one day. Secondly, that no number of Peers are named in the precept, and yet there muſt be Twelve or above. Thirdly, that the precept is awarded for the returne of the Peers before any arraignement or plea pleaded by the priſoner. Fourthly, that in this caſe the Lords are not de vicineto, and therefore the ſitting and triall may be in any County of England. And herein are great differences between the caſe of a Peer of the Realme, and of one under the degree of Nobility.

1 H.4.1. 8. At the day, the Steward with ſix Serjeants at Armes before him takes his place under a Cloth of Eſtate, and then the Clerk of the Crown delivereth unto him his Commiſſion, who redelivereth the ſame unto him. And the Clerk of the Crown cauſeth a Serjeant at armes to make three Oyes, and commandement given in the name of the Lord High Steward of England to keep ſilence: 1 H.4.1. and then is the Commiſſion read. And then the Uſher delivereth to the Steward a white rod, who redelivereth the ſame to him againe, who holdeth it before the Steward. Then another Oyes is made, & commandement given in the name of the High Steward of England, to all Juſtices and Commiſſioners to certifie all Indictments and Records, &c. Which being delivered into Court, the Clerk of the Crown readeth the return. Another Oyes is made, that the Lieutenant of the Tower, &c. returne his Writ and Precept, and to bring the priſoner to the Bar: which being done, the Clerk reads the returne. Another Oyes is made, that the Serjeant at armes return his precept with names of the Barons and Peers by him ſummoned, and the return of that is alſo read. Another Oyes is made, that all Earles, Barons and Peers (which by the commandement of the High Steward be ſummoned) anſwer to their names, and then they take their

places

places and ſit down, and their names are recorded: and the entry of the Record is, that they appear, Ad faciendum ea quæ ex parte Domini Regis eis injungentur. And when they be all in their places, and the priſoner at the Bar, the High Steward declares to the priſoner the cauſe of their aſſembly, and perſwades him to anſwer without fear, that he ſhall be heard with patience, and that juſtice ſhould be done. Then the Clerk of the Crown reads the Indictment, and proceeds to the arraignment of the priſoner, and if he plead not guilty, the entry is, Et de hoc de bono & malo ponit ſe ſuper Pares ſuos, &c. Then the High Steward giveth a charge to the Peers, exhorting them to try the priſoner indifferently according to their evidence. 1 H.4.1.

9. The Peers are not ſworn, but are charged, Super fidelitatibus, & ligeantiis Domino Regi debitis: for ſo the Record ſpeaketh.

10. Then the Kings learned Councell give evidence, and produce their proofs for the King againſt the priſoner.

11. But the priſoner, when he pleadeth not guilty, whereby he denieth the fact, he needs have no advice of Councell to that plea. But if he hath any matter of law to plead, as Humfrey Stafford in 1 H.7. had, viz. The priviledge of Sanctuary, he ſhall have Councell aſſigned to him to plead the ſame, or any other matter in law: as to plead the generall pardon, or a particular pardon, or the like. And after the plea of not guilty, the priſoner can have no Councell learned aſſigned to him to anſwer the Kings Councell learned, nor to defend him. And the reaſon thereof is, not becauſe it concerneth matter of fact, for Ex facto jus oritur: but the true reaſons of the law in this caſe are: Firſt, that the teſtimonies and the proofs of the offence ought to be ſo clear and manifeſt, as there can be no defence of it. * Secondly, the Court ought to be in ſtead of councell for the priſoner, to ſee that nothing be urged againſt him contrary to law and right: nay, any learned man that is preſent may inform the Court for the benefit of the priſoner, of any thing that may make the proceedings erroneous. And herein there is no diverſity between the Peer and another Subject. And to the end that the triall may be the more indifferent, ſeeing that the ſafety of the priſoner conſiſteth in the indifferency of the Court, the Judges ought not to deliver their opinions before-hand of any criminall caſe, that may come before them judicially. And we reade, that in the caſe of Humfrey Stafford that arch-traytor, Huſſey Chiefe Juſtice, beſought King Henry the Seventh, that he would not deſire to know their opinions before-hand for Humfrey Stafford, for they thought it ſhould come before them in the Kings Bench judicially, and then they would do that which of right they ought; and the King accepted of it. And therefore the Judges ought not to deliver their opinions before-hand upon a caſe put, and proofs urged of one ſide in abſence of the party accuſed: eſpecially in caſes of high nature, and which deſerve ſo fatall and extreme puniſhment. For how can they be indifferent, who have delivered their opinions before-hand without hearing of the party, when a ſmall addition, or ſubſtraction may alter the caſe? And how doth it ſtand with their Oath, who are ſworn, That they ſhould well and lawfully ſerve our Lord the King and his people in the office of a Juſtice? and they ſhould do equall law, and execution of right to all his ſubjects, &c. See more of this matter in the 13 Section here following.

In Scotland in all criminall caſes, yea in caſes of High Treaſon, *Pars rea* may have Councell learned. Vide hereafter upon the ſtatute of 31 Eliz. concerning witneſſes.

* See more hereof c.1.63. Councell learned in Pleas of the Crown.

1 H.7 fo.26.

18 E.3.

12. There be alwayes either all, or ſome of the Judges ever attendant upon the High Steward, and ſit at the feet of the Peers, or about a Table in the middeſt, or in ſome other convenient place.

13. After all the evidence given for the King, and the priſoners anſwers, and proofs at large, and with patience heard: then is the priſoner withdrawn from the Bar to ſome private place under the cuſtody of the Lieutenant, &c. And after that he is withdrawn, the Lords that are tryers of the priſoner go to ſome place to conſider of their evidence: and if upon debate thereof, they ſhall doubt of any matter, and thereupon ſend to the High Steward to have conference with the Judges, or with the High Steward, they ought to have no conference, either with the Judges or the High Steward, but openly in Court, and in the pre-

Paſch. 26 H. 8. in the caſe of the Lord Dacres of the North, reported by Juſtice Spilman, which we have ſeen.

ſence, and hearing of the Priſoner; as it was reſolved by all the Juſtices of England in the reign of King H. 8. in the caſe of the Lord Dacres of the North. And this was a juſt reſolution; for when the Lords ſhould put a caſe, and aſk advice thereupon, the priſoner ought by law to be preſent, to ſee that the caſe or queſtion be rightly put: and therefore that nothing be done in his abſence, untill they be agreed on their verdict. Hereupon it followeth, that if the Peers of the Realm, who are intended to be indifferent, can have no conference with the Judges, or with the High Steward in open Court in the abſence of the priſoner: à fortiori, the Kings learned Counſell ſhould not in the abſence of the party accuſed, upon any caſe put, or matter ſhewed by them, privately preoccupate the opinion of the Judges: and upon ſo juſt a reſolution the caſe ſucceeded well, for the Peers found the Lord Dacres not guilty.

Mag. Cart. ca. 29.

14. A Noble man cannot waive his triall by his Peers, and put himſelf upon the triall of the Country, that is, of twelve Freeholders: for the ſtatute of Magna Carta is, that he muſt be tried per Pares. And ſo it was reſolved in the Lord Dacres caſe, Ubi ſupra.

* Reſolved by all the Judges. Mich. 13 & 14 El. in the caſe of Tho. Duke of Norff.
1 H. 4. fo. 1.
10 E. 4. 6. b.
13 H. 8. fo. 12.
Tr. 26 H. 8. Spilmans Report.

15. * The Peers ought to continue together (as Juries in caſe of other Subjects ought to do) untill they be agreed of their Verdict: and when they are agreed, they all come again into the Court, and take their places, and then the Lord High Steward publickly in open Court, beginning with the puiſne Lord, (who in the caſe of the Lord Dacre was the Lord Mordant,) ſaid unto him: My Lord Mordant, Is William Lord Dacre guilty of the treaſons, whereof he hath been indicted or arraigned, or of any of them? And the Lord ſtanding up ſaid, Not guilty: and ſo upward of all the other Lords ſeriatim: who all gave the ſame Verdict: In which caſe the entry is, Super quo W. Comes E. & cæteri antedicti Pares inſtanter ſuper fidelitatibus & ligeantiis dicto Domino Regi debitis, per præfatum Seneſcallum ab inferiori Pare uſque ad ſupremum ſeparatim publice examinati dicunt, quòd W. Dominus Dacre non eſt culp. &c.

16. The Peers give their Verdict in the abſence of the priſoner, and then is the priſoner brought to the Bar again: and then doth the Lord Steward acquaint the priſoner with the verdict of his Peers, and give judgement accordingly, either of condemnation or acquittall. But it is not ſo in the caſe of another ſubject: for there the verdict is given in his preſence.

Rot. Roman. 17 E. 2. m. 6. Adam Orleton B. of Hereford. 2 H. 4. Marks B. of Carliſle. Stanf. Pl. Coron. li. 3. ca. 62. fo. 153. in Temps H. 8.

17. Every Lord of Parliament, and that hath voice in Parliament, and called thereunto by the Kings Writ, ſhall not be tried by his Peers, but onely ſuch as ſit there ratione Nobilitatis, as Dukes, Marquiſſes, Countes, Viſcounts or Barons, and not ſuch as are Lords of Parliament, ratione Baroniarum, quas tenent in jure Eccleſiæ, by reaſon of their Barontes which they hold in the right of the Church, as Archbiſhops, and Biſhops, and in time paſt ſome Abbots and Priors, but they ſhall be tried by the countrey, that is, by Free-holders, for that they are not of the degree of Nobility.

a 10 E. 4. 6. b. Mag. cart. c. 29.

18. [a] No Noble man ſhall be tried by his Peers, but only at the ſuit of the King upon an indictment of high treaſon, or miſpriſion of the ſame, petit treaſon, murder, or other felony, or miſpriſion of the ſame. But in caſe of a Præmunire or the like, though it be at the ſuit of the King, he ſhall not be tried by his Peers, but by Free-holders. And ſo in an Appeal at the ſuit of the party for petit treaſon, murder, robbery, or other felony, he ſhall be tried by Freeholders. See more hereof in the ſecond part of the Inſtitutes, Magna Carta, cap. 29.

b 11 E. 3. b. fo. 473. 8 R. 2. proces. pl. ultimo. 20 E. 4. 6. 20 El. Dier 360. 38 H. 8. Br. treaſon. Seignior Sancars caſe. Lib. 9. fo. 117.

19. [b] And albeit a man be Noble, and yet no Lord of the Parliament of this Realm, (as if he be a Nobleman of Scotland, or of Ireland, of France, &c.) he ſhall be tried by Knights, Eſquires, or others of the Commons. And ſo it is of the ſon of a Duke, Marquiſſe, Earle, &c. he is Noble, and called Lord: and yet becauſe he is no Lord of Parliament, he ſhall be tried as one under the degree of a Peer, and Lord of Parliament.

20. No Peer of the Realm, or any other ſubject ſhall be convicted by Verdict, but the ſaid offences muſt be found by above Four and twenty, viz. by twelve, or above, at his indictment, or by twelve Peers, or above, if he be Noble, and by twelve

twelve, and not above, if he be under the degree of Nobility.

21. A Peer of the Realm being indicted of treaſon, or felony, or of miſpriſion, as is aforeſaid, and duly tranſmitted to the Lords, may be arraigned thereof in the upper Houſe of Parliament, as frequently in Parliament Rolls it doth appeare: but then there muſt be appointed a Steward of England, who ſhall put him to anſwer: and if he plead not guilty, he ſhall be tried per Pares ſuos, and then the Lords Spirituall muſt withdraw, and make their proxies: but no Appeal of treaſon can be in Parliament,[a] but is ouſted by the ſtatute of 1 H.4. cap.14.

10 E.4.6. Rot.Par. 21 R.2. Countee de Arundels caſe. Rot.Parliam. 5 H.4. nu.11,12. 31 H.6.nu.49. Counteſs de Devons caſe. 28 H.6.nu.19. Duke of Suff.

22. [b] And as the beginning (viz. the finding of the indictment by Freeholders) is equall to them both: ſo the moſt extream and heavy judgement, if they be found guilty, is equall to both, &c. which you may reade in the firſt part of the Inſtitutes, Sect. 147.

a 1 H.4.cap.14. *b* 1 H.4.1. Stanf. Pl.Coron. 182. E. K.

23. [c] And though the Commiſſion of the Lord Steward be only in theſe latter times hac vice, yet may the ſame be adjourned, as other Commiſſions hac vice may. And ſo it was holden in the Lord Dacres Caſe. And ſo it was done by the Steward of England in the caſe of R. Earle of S. and of F. his wife, who adjourned his Commiſſion untill the next day.

See hereafter cap. Judgement and execution. *c* Paſch.26 H.8. ubi ſupra.

24. If execution be not done according to the judgement, then the High Steward in the caſe of a Peer of the Realm, or the Court or Commiſſioners in caſe of another ſubject, may by their precepts under their ſeales command execution to be done according to the judgement: but in caſe of High Treaſon, if all the reſt of the judgement (ſaving the beheading, which is part of the judgement) be pardoned, this ought to be under the Great Seal of England.

L. 5 E.4.33. 12 H.4.10.

25. And when the ſervice is performed, then is an Oyes made for the diſſolving of the Commiſſion; and then is the White Rod, which hath been born and holden before the Steward, by him taken in both his hands, and broken over his head.

Laſtly, the Indictments together with the Record of the arraignment, triall, and judgement, ſhall be delivered into the Kings Bench, there to be kept and inrolled.

Hitherto we have ſpoken when a Noble man doth appear, and plead not guilty, and put himſelf upon his Peers: Now let us ſee what ſhall be had againſt him when he is indicted, and appears not, and cannot be taken: and generally he ſhall be outlawed, per judicium Coronatorum. But how doth that ſtand with Magna Charta, Nec ſuper eum ibimus, nec ſuper eum mittemus, niſi per legale judicium parium ſuorum? That is to be intended, when he appears and pleads not guilty, and puts himſelf upon his Peers: but when he abſents himſelf, and will not yeild himſelf to the due triall of his Peers, then he ſhall be outlawed per judicium Coronatorum, or elſe he ſhould take advantage of his own contumacy, and flying from judgement. [d] For proces to be awarded upon the indictment or appeal of treaſon, felony or treſpaſſe, either againſt a Nobleman or any other, ſee the ſtatute of 6 H. 6. and 8 H. 6. and if the proces and order preſcribed by thoſe ſtatutes be not purſued, the outlawry may be reverſed by writ of error, which writ ought to be granted to him ex merito Juſtitiæ, as it was adjudged in Ninian Menvils caſe: and thoſe ſtatutes do extend as well to the Kings Bench, as to other courts having by commiſſion power to hear and determine the ſame, and very few outlawries of treaſon or felony, are of force and validity in law, for that theſe Acts are not purſued.

Mag.Cart.ca.29. *d* See hereafter in the chapter of judgement and execution concerning reverſing of Outlawries. 6 H.6.c.1. 8 H.6.ca.10. Mich.26 & 27 Eliz. in bre de error coram Rege in Ninian Menvils caſe. Utlary de haut treaſon reverſe in Bank le Roy. * 19 H.6.fo. 1,2. 11 H.6.54. 1 E.4. 1. 30 H.6. proces 192. 31 H.6.11. Vide F.N.B. 115.l. Ll.Intr.R.f.122. Stanf. Pl.cor.68. 69. 182.l.

And theſe Acts are well expounded by our * Books, and therefore they ſhall not need to be recited at large. This is neceſſary to be added, that the opinion of Stanf. Pl. Cor. 182. l. upon the ſtatute of 33 H.8.c.20. is, where the attainder is not erroneous, but lawfull by the courſe of the law: and ſo it was reſolved, Tr.28 Eliz. and thereupon [e] the ſtatute of 28 Eliz. ca.2. was made, that no attainder that then was for any High Treaſon ſhould be reverſed for error where the party was executed. But that Act extendeth onely to attainders before that Act, and where the party attainted ſuffered paines of death, as hath been ſaid.

e 28 El.ca.2.

But admitting the proces be awarded according to theſe ſtatutes, and the truth is, that the party indicted of High Treaſon (be he noble or other) at the time of the outlawry pronounced, is out of the realm, &c. whether may he avoid the ſame by writ of error? The anſwer is, that he might have avoided the ſame by writ of error at the common law: but now in caſe of High Treaſon he is barred of his writ of error by the ſtatutes of 26 H. 8. and 5 E. 6. which ſtatutes are expounded to extend generally to all treaſons, but thoſe ſtatutes extend not to any other offence then high treaſon only, and therefore all other offences remain as they did at the common law for that point.

See the firſt part of the Inſti. Sect. 26 H. 8. cap. 13. 5 E. 6. cap. 11. 12 El. Dier 287.

Now for that all indictments for any offence whatſoever, as well of Noblemen, as of any under the degree of Nobility, ought by the common law of the Realm to be by perſons duly returned, and by * lawfull liege people, indifferent as they ſtand unſworn, and without any denomination of any: a good and profitable law * was made in that behalf at the Parliament holden in 11 H. 4. in theſe words. Item becauſe that now of late [a] Inqueſts were taken at Weſtm' of perſons named to the [b] Juſtices, without due return of the Sherif, of which perſons ſome were [c] outlawed before the ſaid Juſtices of record, and ſome fled to Sanctuary for treaſon, and ſome for felony, there to have refuge; by whom as well many offenders were indicted, as other lawfull liege people of our Lord the King, not guilty by conſpiracy, abetment, and falſe imagination of other perſons for their ſpeciall advantage and ſingular lucre, againſt the courſe of the common law uſed and accuſtomed before this time. Our ſaid Lord the King for the greater eaſe and quietneſſe of his people, will and granteth, that the ſame indictment ſo made, with all the dependence thereof be [d] revoked, adnulled, void, and holden for none for ever. And that from henceforth no indictment be made by any ſuch perſons, but by enqueſt of the Kings lawfull [e] liege people, in the manner as was uſed in the time of his Noble Progenitors, returned by the Sherifs, or baylifs of franchiſes, without any [f] denomination to the Sherifs, or baylifs of franchiſes before made by any perſon of the names, which by him ſhould be impanelled, except it be by the officers of the ſaid Sherifs or baylifs of franchiſes ſworn and known to make the ſame, [g] and other officers to whom it pertaineth to make the ſame according to the law of England. And if any indictment be made hereafter in any point to the contrary, that the ſame indictment be alſo void, revoked, and for ever holden for none.

* Artic. ſup. cart. cap. 9. 28 E. 1. 20 E. 3. cap. 6. 34 E. 3. c. 4. 42 E. 3. c. 11. Regiſt. 178. Rast. pl. 117.
* 11 H. 4. ca. 9.
[a] Stanf. pl. cor. 87. c
[b] Rot. Par. 11 H. 4. nu. 15. in the kings bench.
[c] Vid. 11 H. 4. fo. 41. 21 H. 6. 30. 9 E. 4. 16. 3 H. 6. 55. 26 Aſſ. 28.
[d] 11 H. 4. 41.
[e] 14 H. 4. 19.
[f] 21 E. 3. 5. 15 E. 3. chal. 113. 27 Aſſ. pa. 65. 28 Aſſ. 24. 22. 49 E. 3. 1. 49 Aſſ. 1. 28. 43 E. 3. chall. 94. 6 R. 2. chall. 102. 7 H. 4. 10. 21 E. 4. 74. 19 H. 6. 9. 21 H. 6. 22. 14 H. 7. 1.
[g] Nota.

The body of this Act conſiſteth upon two diſtinct Purviens or Branches, the one to remedy a miſchief paſt, the other to provide for the time to come. The firſt branch conſiſteth of a preamble, and a purview: and the preamble containeth theſe eight parts. Firſt, it ſheweth divers inqueſts had been taken at Weſtminſter by perſons named to the Juſtices. Secondly, without due return of the Sherif. Thirdly, of which ſome were outlawed before the ſaid Juſtices of record. Fourthly, ſome fled to Sanctuary for treaſon, and ſome for felony. Fifthly, by whom any offenders were indicted. Sixthly, ſome not guilty. Seventhly, by conſpiracy, &c. Eighthly, that all this was againſt the courſe of the common law. By the body of the Act, it is enacted that the ſame indictment, with all the dependence thereof, be revoked, and made void. Then followeth the ſecond branch or purview for the time to come, and this purview conſiſteth of divers parts: Firſt, in deſcribing by what perſons indictments ought to be found, and therein 1. privative, that is, not by any ſuch perſons, having reference to the preamble, which perſons we have before particularly diſtinguiſhed. 2. Poſitive, that all indictments muſt be found by perſons of theſe qualities. 1. They muſt be the Kings lawfull liege people. 2. Returned by Sheriffs or baylifs of franchiſes, and other officers to whom it pertaineth. 3. Without any denomination to the Sheriffs, baylifs, or other officers: and this purview is in affirmance, and declaratory of the Common law.

The ſecond part of the purview is introductory of a new law, viz. that if any Indictment be made hereafter in any point to the contrary, that the ſame indictment be void, revoked, and holden for none. Wherein theſe two things are to

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be obſerved: 1. That this is a generall law, and extendeth to all indictments for any crime, default, or offence whatſoever: for the words be [if any indictment] generally without naming of any Court, or before whom. 2. If the indictment be found by any perſons that are outlawed, or not the Kings lawfull liege people, or not lawfully returned, or denominated by any, viz. by all are any of theſe, that then the indictment is void, for the words be, [if any indictment be made hereafter in any point to the contrary, &c.] Upon this ſtatute in the caſe of Robert Scarlet before the Juſtices of Aſſiſe at Bury in the County of Suffolk, in Sommer Vacation, 10 Ja.R. theſe points were reſolved and adjudged: Firſt, where at the Seſſions of the Peace holden at Woodbridge in the ſaid County of Suffolk, Robert Scarlet by confederacy between him and the Clerk, that was to read the panell of the grand Jury returned by the Sherif, whereof he was none, albeit he laboured the Sherif to have returned him) that the Clerk ſhould read him as one of the pannell, which was done accordingly, and he ſworn: It was reſolved and adjudged that this caſe was within this ſtatute, for that he was not returned by the Sherif. Secondly, that where the reſt of the great inqueſt giving faith to him indicted ſeventeen honeſt and good men upon divers penall ſtatutes, which was done by the ſaid Robert Scarlet maliciouſly: It was reſolved and adjudged, that albeit he * alone was ſworn without the return of the Sherif, and all the reſt duly returned, yet that this caſe was within this ſtatute, and all the indictments found by him and the reſt were void by this ſtatute: for hereby it appeared what miſchief ſuch a one might doe. Thirdly, that Robert Scarlet upon this caſe had offended againſt the ſaid Act, and might be indicted thereupon: and accordingly he was upon ſufficient proof of the fact, as is afore-ſaid, indicted upon the ſaid Act, and pleaded not guilty, and was found guilty. Fourthly, that this Act extended not onely to indictments of treaſon and felony, but of all other offences and defaults whatſoever, according to the generality of the words. Fifthly, conſideration was had of the Act of 3 H. 8. cap. 12. and reſolved clearly that this ſtatute had not altered the Act of 11 H. 4. in any thing concerning the offence of Scarlet, as upon that, which ſhall be ſaid of the Act of 3 H. 8. ſhall appear. And upon hearing of Counſell learned what they could ſay in arreſt of judgement, at laſt judgement was given that he ſhould be fined and impriſoned, and ordered by the Court that no proces ſhould goe out upon the ſaid indictments found by the ſaid great inqueſt, whereof Scarlet was one.

* 47 E. 3. 1.
7 H. 4. 10.
21 E. 4. 74.

3 H. 8. ca. 12.

But notwithſtanding this good law, through the ſubtilty, and untrue demeanor of Sherifs, and their Miniſters, great extortions and oppreſſions be and have been committed and done to many of the Kings ſubjects by meanes of returning at Seſſions holden within counties and ſhires for the body of the ſhire, the names of ſuch perſons as for the ſingular advantage, &c. of the ſaid Sherifs and their Miniſters, will be wilfully forſworn and perjured by the miniſter labour of the ſaid Sherifs and their Miniſters, by reaſon whereof many ſubſtantiall perſons, the Kings true ſubjects, have been wrongfully indicted of murders, felonies, and misdemeanours: and ſometime by labour of the ſaid Sherifs and their Miniſters, divers great felonies and murders have been concealed, &c. For remedy of which miſchiefs it is enacted by the ſaid ſtatute of 3 H. 8. cap. 12. That the Juſtices of Giol Delivery, or Juſtices of Peace, whereof one to be of the Quorum, in their open Seſſions may reform the panell returned by the Sherif to inquire for the King, by putting to and taking out the names of the perſons ſo impanelled by the diſcretion of the ſaid Juſtices, &c. and that the Sherif ſhall return the panels ſo reformed. This Act extends onely to Juſtices of Gaol Delivery, and of the Peace: The body of the Act for offences is generall and evident. Vide 11 H. 7. cap. 24.

Vid. 11 H. 7. c. 24.

Nota Lector, that the aforeſaid Parliament of 11 H. 4. begun in Quindena Hilarii, Anno 11 H. 4. and the ſame tearm, viz. Hil. 11 H. 4. fo. 4. fo. 41. it was according to the ſaid Act of 11 H. 4. reſolved by Gaſcoign Chief Juſtice, and all the reſt of the Juſtices, that an indictment of felony found by an inqueſt before 5 H. 4. whereof one was outlawed of felony, and another was acquited by the generall

Hil. 11 H. 4. f. 41.

generall pardon, ſo as they were not probi & legales homines to enquire as the law willeth, and after the party had pleaded not guilty to the felony, it was awarded, that all the indictments by them found, were annulled and made void. Herewith agreeth Stanford in his Pleas of the Crown, fo.87. & 88. Vide F. tit. Indictment 25. & Coron. 89. and Brook tit. indictment 2. Note the Act ſaith, that they were outlawed before themſelves, ſo as the Court may take knowledge thereof of themſelves, or of any other, as amicus curiæ: but the ſafeſt way for the party indicted is to plead, upon his arraignment, the ſpeciall matter given unto him by the ſtatute of 11 H.4. for the overthrow of the indictment, with ſuch averments, as by law are required, (agreeable to the opinion of the Lord Brook. Ubi ſupra.) and to plead over to the felony, and to require councell learned for the pleading thereof, which ought to be granted; and alſo to require a copy of ſo much of the indictment, as ſhall be neceſſary for the framing of his plea, which alſo ought to be granted. And theſe Laws made for indifferency of Indicters, ought to be conſtrued favourably, for that the indictment is commonly found in the abſence of the party, and yet it is the foundation of all the reſt of the proceeding.

Stanf. Pl.cor.87, 88. F. tit. Indictment 25. & Coron.89. Br. tit. indict.2.

Vid. Ieſtatutes de 1 R.3.ca.4. 33 H.6.c.2. W.2 ca.13. 1 E.3. ſtat.2. cap.17.

To draw to an end concerning Trials: It is regularly true, that by the Common law the triall ſhall be in the County, where the indictment is taken: and by the aforeſaid Act of 35 H.8. treaſons and miſpriſions of treaſons committed or done out of the Realm, &c. ſhall be enquired of, heard, and determined before the Juſtices of the Kings Bench, &c. Now the caſe fell out upon this ſtatute to be thus: * One was indicted before the Juſtices of the Kings Bench, at the Term holden at Hertford by a Jury of the County of Hertford, for divers high treaſons committed out of this Realm, and after the Term was adjourned to Weſtm. in the County of Midd. The queſtion was, by which of the Counties the party indicted ſhould be tried: And it was reſolved, that he ſhould be tried by men of that County where the indictment was taken. But otherwiſe it is upon the ſtatute of 5 El. ca.1. the caſe being, that Horn Biſhop of Winch. tendred to Edmond Bonner late Biſhop of London, in the County of Surrey, within his Dioces, the oath of Supremacy according to the Act of 1 Eliz. which Bonner refuſed, and this was certified by the Biſhop of Winch. into the Kings Bench, then ſitting at Weſtminſter in the County of Midd. Now by the ſtatute of 5 El. he that refuſeth the oath is to be indicted of a Premunire by a Jury of Midd. as a Jury of that County might doe for any offence done in that County, and extendeth only to the indictment, where the words of the Act of 35 H.8. be, [ſhall be enquired of, heard, and determined,] the queſtion upon the ſtatute of 5 Eliz. was, if Bonner ſhould appear and plead not guilty, by what County he ſhould be tried, whether by a Jury of Midd. where the indictment was, or by a Jury of Surrey, where the offence was committed; and reſolved that he ſhould be tried by a Jury of Surrey: for the ſtatute of 5 El. extendeth to the indictment only, and leaveth the triall to the Common law, which appointeth the triall to be, where the offence is committed, and ſo a manifeſt diverſity between the two caſes: for regularly by the Common Law in all Pleas of the Crown, Debet quis juri ſubjacere, ubi deliquit.

* Mich. 35 & 36 El. in the caſe of Francis Dacres.

5 El. cap. 1.

Mich. 6 & 7 El. Dier fo. 234. Bonners caſe.

It is now neceſſary to be known, how Priſoners (to ſpeak once for all) committed for treaſon, or any other offence ought to be demeaned in Priſon. Bracton ſaith, Solent præſides in carcere continendos damnare, ut in vinculis contineantur, ſed hujuſmodi interdicta ſunt à lege, quia carcer ad continendos, non ad puniendos haberi debeat: And in another place he ſaith, Cum autem taliter captus coram Juſtic. eſt producendus, produci non debet ligatis manibus, (quamvis interdum geſtans compedes propter evaſionis periculum,) & hoc ideo, ne videatur coactus ad aliquam purgationem ſuſcipiendam.

Bract.lib.3. fo.154.b. *Vincula qui ſenſit, didicit ſuccurrere vinctis.* Bract.lib.3.fo. 105.a. Stanford 78. Bract.li.3. f.137. Note, Shackels about the feet ought not to be, but for fear of eſcape. Mirror c.2.§.9.

[a] If felons come in judgement to anſwer, &c. they ſhall be out of Irons, and all manner of bonds, ſo that their pain ſhall not take away any manner of reaſon, nor them conſtrain to anſwer, but at their free will. [b] And in another place he ſaith, and of priſoners we will that none ſhall be put in Irons, but thoſe which

[a] Brit.c.5. fo.14. [b] Cap.11.fo.17.

which ſhall be taken for felony, or treſpas in Parks or Alvaries, or which be found in arrerages upon account, and we defend that otherwiſe they ſhall not be puniſhed nor tormented. [c] Omnes autem attachiabiles licet vicecomiti in priſona cuſtodire, &c. non tamen ad puniend, ſed ad cuſtodiend, &c. [d] It is an abuſe that priſoners be charged with Irons, or put to any pain before they be attainted.

W.2. c.1. after judgement. Lib.3. fo.44. Lib.8. fo. 100. 24 H.8. Dier 249. Pl. Com. 360.a. c Fleta li.1. ca.26. d Mirror c.5. §.1.

[e] Quidam ſacerdos arraniatus de felonia poſuit ſe ſuper patriam, & ſtetit ad barram in ferris, ſed per præceptum Iuſtic. liberatur à ferris. And there is no difference in law, as to a Prieſt and a Lay man, as to Irons.

e 8 E.2. cor.432. f Tr.7 E.3. coram rege Rot. 44.

[f] Preſentat quod ubi quidam Robertus Bayhens de Tanesby captus fuit, & in priſona caſtri Lincoln detentus pro quodam debito Statut. mercatorii in cuſtodia Tho. Boteler Conſtabularii caſtri de Lincoln ibi præd. Tho. le Boteler poſuit ipſum Robertum in profundo Gaole inter lenones in vili priſona contra * formam Statut. &c. & eodem profundo detinuit, quouſque idem Robertus fecit finem cum eo de 40 s. quos ei ſolvit per extorſionem.

* 1 E.3.c.7.

So as hereby it appeareth, that where the law requireth that a priſoner ſhould be kept in ſalva & arcta cuſtodia, yet that that muſt be without pain or torment to the priſoner.

Hereupon two queſtions do ariſe, when and by whom the Rack or Brake in the Tower was brought in.

Tortures, the rack, &c.

To the firſt, Iohn Holland Earl of Huntingdon, was by King H. 6. created Duke of Exeter, and Anno 26 H. 6. the King granted to him the office of the Conſtableſhip of the Tower: He and William de la Poole Duke of Suffolk, and others, intended to have brought in the Civill Laws. For a beginning whereof, the Duke of Exeter being Conſtable of the Tower firſt brought into the Tower the Rack or Brake allowed in many caſes by the Civill Law: and thereupon the Rack is called the Duke of Exeters Daughter, becauſe he firſt brought it thither.

Rot. Par. 26 H.6. Rot. Parl. 28 H.6. nu. 30. Hollenſhed. pa.670. &c.

To the ſecond upon this occaſion, Sir Iohn Fortеſcue Chief Iuſtice of England, wrote his Book in commendation of the laws of England, and therein preferreth the ſame for the government of this countrey before the Civill Law; and particularly that all tortures and torments of parties accuſed were directly againſt the Common Laws of England and sheweth the inconvenience thereof by fearfull example, to whom I refer you being worthy your reading. So as there is no law to warrant tortures in this land, nor can they be juſtified by any preſcription being ſo lately brought in.

Innocentem cogit mentiri dolor. Forteſcue. ca.22. fo.24.

And the Poet in deſcribing the iniquity of Rhadamanthus, that cruell Iudge of Hell, ſaith,

Caſtigatque, auditque dolos, ſubigitque fateri. Virgil.

Firſt, he puniſhed before he heard, and when he had heard his denisll, he compelled the party accuſed by torture to confeſſe it. But far otherwiſe doth Almighty God proceed poſtquam reus diffamatus eſt. 1. Vocat. 2. Interrogat. 3. Iudicat. Luke 16.1,2, &c. John 7.51. Nunquid lex noſtra judicat hominem niſi prius audierit ab ipſo?

To conclude this point, it is againſt Magna Carta, cap. 29. Nullus liber homo, &c. aliquo modo deſtruatur, nec ſuper eum ibimus, nec ſuper eum mittemus, niſi per legale judicium parium ſuorum, aut per legem terræ. And accordingly all the ſaid ancient Authors are againſt any pain, or torment to be put or inflicted upon the priſoner before attainder, nor after attainder, but according to the judgement. And there is no one opinion in our Books, or judiciall Record (that we have ſeen and remember) for the maintenance of tortures or torments, &c.

And now, to conclude this Chapter of Treaſon. It appeareth in the holy Scripture, that traytors never proſpered, what good ſoever they pretended, but were moſt ſeverely and exemplarily puniſhed: As [a] Corah, Dathan and Abiram, by miracle: Dirupta eſt terra ſub pedibus eorum, & aperiens os ſuum devoravit illos, &c. [b] Athalia the daughter of Amri, interfecta eſt gladio. [c] Bigztha and Thara againſt Aſſuerus, Appenſus eſt uterque eorum in patibula. [d] Abſolon againſt David. Suſpenſus in arbore, & Joab infixit tres Lanceas in corde ejus. [e] Achitophel with Abſolon againſt David. Suſpendio interiit, he hanged himſelfe.

Proditor fingit verbis, dum verbera cudit. a Numb.16.31, 32. & 27.3. b 2 Regum 11.16. c Eſth.12.2,3. d 2 Sam.18.9.14. e 2 Sam.17.23.

himſelf. [f] Abiathar the traiterous High Prieſt againſt Solomon. Abiathar Sacerdoti dixit Rex, &c. Et quidem vir mortis es, ſed hodiè te non interficiam, &c. Ejecit ergo Solomon Abiathar, ut non eſſet Sacerdos. [g] Shimei againſt David, gladio interfectus. [h] Zimri againſt Ela, who burnt himſelf. [i] Theudas (qui occiſus eſt, & circiter 400 qui credebant ei, diſperſi ſunt & redacti ad nihilum) and Judas Galilæus, ipſe periit, & omnes quotquot conſenſerunt ei, diſperſi ſunt. Laſtly, [k] Judas Iſcariot, ſecundum nomen ejus vir occiſionis, the traytor of traytors, Et hic quidem poſſedit agrum de mercede iniquitatis ſuæ, & ſuſpenſus crepuit medius, & diffuſa ſunt omnia viſcera ejus.

Peruſe over all our Books, Records, and Hiſtories, and you ſhall finde a principle in law, a rule in reaſon, and a triall in experience, That treaſon doth ever produce fatall and finall deſtruction to the offender, and never attaineth to the deſired end, (two incidents inſeparable thereunto.) * And therefore let all men abandon it, as the moſt poiſonous bait of the Devill of hell, and follow the precept in holy Scripture, Fear God, honour the King, and have no company with the Seditious.

See more of Treaſon in the next Chapter of Miſprision, &c. and in Principall and Acceſſory, in the title of Judgement and Execution: and in the Chapter of Monomachia, ſingle combate, &c. the reſidue of this Act of 25 E. 3.

f 1 Reg. 2. 26, 27.

g 2 Sam. 16. 5, 6. 1 Reg. 2. 8, &c. 46

h 1 Reg. 16. 9. &c. 18.

i Act. Apoſt. 5. 36, 37.

k Act. Apoſt. 1. 18. Math. 27. 5 laqueo ſe ſuſpendit.

Qui molitur inſidias in patriam, id facit quod inſanus nauta perforans navem in qua ipſe vehitur.

* *Felix quem faciunt aliena pericula cautum.*

Prov. 24, 21.

CAP. III.

Of Miſpriſion of Treaſon.

Miſpriſio prodi-tionis.

See Brac. lib. 3. fo. 118. b. & 119. a

MIſpriſio commeth of the French word Meſpris, which properly ſignifieth neglect or contempt: for [mes] in compoſition in the French ſignifieth mal, as mis doth in the Engliſh tongue: as miſchance, for an ill chance, and ſo meſpriſe is ill apprehended or known. In legall underſtanding it ſignifieth, when one knoweth of any treaſon or felony, and concealeth it, this is miſpriſion, ſo called, becauſe the knowledge of it is an ill knowledge to him, in reſpect of the ſevere puniſhment for not revealing of it: For in caſe of miſpriſion of High Treaſon he is to be impriſoned during his life, to forfeit all his goods, debts, and duties for ever, and the profits of his lands during his life: and in caſe of felony, to be fined and impriſoned. And in this ſenſe doth the ſaid ſtatute of 1 & 2 Ph. & Mar. ſpeak, when it ſaith, Be it declared, and enacted, by the Authority aforeſaid, that concealment or keeping ſecret of any High Treaſon be deemed and taken only miſpriſion of treaſon, and the offenders therein to forfeit and ſuffer, as in caſes of miſpriſion of treaſon hath heretofore been uſed. * But by the Common law concealment of High Treaſon was treaſon, as it appeareth in the caſe of the Lord Scrope, An. 3 H. 5. and by Bracton, lib. 3. fo. 118. b. & 119. a.

See hereafter ca. 65. of miſpriſions, &c.

See hereafter in Thefbote. ca. 61. 1 & 2 Ph. & Mar. Ubi ſupra.

See 1 E. 6. c. 12. and 1 El. ca. 6. 25 H. 8. ca. 12.

* Hil. 14 El. cited by the Lo. Dier in the Lo. Lumleys caſe. MS.

[a] It is miſpriſion of High Treaſon, for forging of money, which neither is the money of this Realm of England, nor currant within the ſame.

[b] Miſpriſion of High Treaſon in concealing of a Bull, &c. See the ſtatute.

[c] It is ſaid in 2 R. 3. that every treaſon or felony includeth in it a miſpriſion of treaſon or felony. Therefore if any man knoweth of any High Treaſon, he ought with as much ſpeed as conventently he may to reveal the ſame to the King, or ſome of his Privy Councell, or any other Magiſtrate. And miſpriſion in a large ſenſe is taken for many great offences which are neither treaſon nor felony, whereof we ſhall ſpeak more hereafter, being in this place reſtrained to miſpriſion of treaſon.

[a] 14 El. ca. 3.

[b] 13 El. ca. 2.

[c] 2 R. 3. fo. 9. Stanf. 57. c.

See John Coniers Caſe Dier 296. That the receiving of one that hath counterfeited the Kings Coin, and comforting of him knowing him to have counterfeited the Kings Coin, is but miſpriſion.

See more of miſpriſion of treaſon in the Chapters of High Treaſon, and of Principall and Acceſſory.

CAP.

CAP. IV.

Felony by compaſsing or conſpiring to kill the King, or any Lord or other, of the Kings Counſell.

Next hereunto we have thought good to ſpeak of the Statute of 3 H. 7. the letter of which law enſueth. 3 H. 7. cap. 14.

Item, Forasmuch as by quarrels made to ſuch as have been in great authority, office, and of counſell with Kings of this Realm, hath enſued the deſtruction of Kings, and the undoing of this Realm; ſo as it hath appeared evidently, when compaſſing of the death of ſuch as were of the Kings true ſubjects was had, the deſtruction of the Prince was imagined thereby: and for the moſt part it hath grown, and been occaſioned by envy, and malice of the Kings own houſhold-ſervants; as now of late ſuch a thing was likely to have enſued: * And for ſo much as by the law of this land, if actuall deeds be not had, there is no remedy for ſuch falſe compaſſings, imaginations, and confederacies had againſt any Lord, or any of the Kings Counſell, or any of the Kings great Officers in his Houſhold, as Steward, Treaſurer, & Comptroller: and ſo great inconveniencies might enſue, if ſuch ungodly demeaning ſhould not be ſtraitly puniſhed before that actuall deed were done. Therefore it is ordained by the King, the Lords Spirituall and Temporall, and the Commons of the ſaid Parliament aſſembled, and by authority of the ſame, That from hence forward, the Steward, Treaſurer, and Comptroller of the Kings houſe for the time being, or one of them, have full authority and power to enquire by Twelve ſad men, and diſcreet perſons of the Chequer Roll of the Kings honourable houſhold, if any ſervant admitted to be his ſervant ſworn, and his name put into the Chequer Roll of his houſhold, whatſoever he be, ſerving in any manner, office, or roome, reputed, had and taken, under the ſtate of a Lord, make any confederacies, compaſſings, conſpiracies, or imaginations with any perſon or perſons, to deſtroy or murder the King, or any Lord of this Realm, or any other perſon ſworn to the Kings Counſell, Steward, Treaſurer, or Comptroller of the Kings houſe; that if it be found before the ſaid Steward for the time being, by the ſaid twelve ſad men, that any ſuch of the Kings ſervants as is aboveſaid, hath confederated, compaſſed, conſpired, or imagined, as is aboveſaid, that he ſo found by that Inquiry, be put thereupon to anſwer. And the Steward, Treaſurer, and Comptroller, or two of them have power to determine the ſame matter according to the Law. And if he put him in triall, that then it be tried by other twelve ſad men of the ſame houſhold: and that ſuch miſdoers have no challenge, but for malice. And if ſuch miſdoers be found guilty by confeſſion, or otherwiſe, that the ſaid offence be judged felony, and they to have judgement and execution as felons attainted ought to have by the Common Law. * Nota.

This Act divideth it ſelf into Two generall parts, viz. the Preamble, And the body of the Act. In the preamble Three things are to be obſerved.

1. That by quarrels made to ſuch, as are in great Authority, office, and of Counſell with the Kings of the Realm, have enſued the deſtruction of the Kings, and the undoing of the Realm, as in the Records of Parliament, and Hiſtories of King E. 2. R. 2. King H.6.&c. you may reade. And as King William Rufus was ſlain in the new Forreſt by the glance of an arrow, ſo the overthrow of the King, &c. hath followed by glances, and conſequents, when the bow of deſtruction hath been aimed at the overthrow of thoſe who were in great Authority neer about, and dear to the King, not daring in direct manner to aim at the King himſelf. Therefore the firſt concluſion is, that when the compaſſing of the death of ſuch as were of the Kings true ſubjects was had, the deſtruction of the Prince was imagined thereby.

2. That for the moſt part, it hath grown by envy and malice by the Kings own houſhold ſervants: and the reaſon thereof is for that they being of the Kings houſhold, have greater and readier means either by night or by day to deſtroy ſuch as be of great Authority, and neer about the King: and ſuch an attempt and conſpiracy was before this Parliament made by ſome of this Kings houſhold ſervants, and great miſchief was like thereupon to have enſued, which was the cauſe of the making of this Act.

See before in the chapt. of High treaſon. Verb. Overt Act.

3. The concluſion of the Preamble is, that by the law of the Land, if actuall deeds be not had, there is no remedy for ſuch falſe compaſſings, &c. This is a true declaration: For the bare conſpiracy of the death of any Lord or other of the Kings Councell, or of the Steward, Treaſurer, or Comptroller, unleſſe they had been ſlain indeed, was no felony before this Act, and ſo reſolved upon the contempt and conſpiracy aforeſaid.

In the body of this Act, Six things are enacted. Firſt, that the offender muſt have three qualities. 1. He muſt be the Kings ſervant ſworn. 2. His name muſt be put in the Cheque Roll of the Kings houſhold. 3. He muſt be under the ſtate of a Lord: and if he conſpire with any other, that is not of the Kings houſhold, yet is the conſpiracy within this Act, but he of the Kings houſhold is only the felon within the purview of this ſtatute, as it appeareth by the words of the ſtatute.

Secondly, Againſt what perſons the offence made felony by this Act is to be committed: and in number they be Four. 1. To deſtroy or murder the King. By this Act it expreſſly appeareth by the judgement of the whole Parliament, that beſides the confederacy, compaſſing, conſpiracy, or imagination, there muſt be ſome other overt act or deed tending thereunto, to make it treaſon within the ſtatute of 25 E.3. And therefore the bare confederacy, compaſſing, conſpiracy, or imaginations by words only, is made felony by this Act. But if the Conſpirators do provide any weapon, or other thing, to accompliſh their devilish intent, this and the like is an overt act to make it treaſon. 2. Any Lord of this Realm being ſworn of the Kings Councell: for by the Purview of this Act, he muſt be alſo of the Kings Councell: this is underſtood of the Kings Priviy Councell, and ſo throughout the Act. 3. Any other of the Kings Councell (that is, the Kings Priviy Councell) being under the degree of a Lord. 4. The Steward, Treaſurer, and Comptroller of the Kings houſhold, being great officers, though they be not of the Kings Councell.

See before in the chapt. of High treaſon. Ubi ſup.

Thirdly, The third generall part expreſſeth the perſons to whom power is given to enquire and determine this felony. The Steward, Treaſurer, and Comptroller, or any one of them may enquire. And they or two of them have power by this Act to hear and determine the ſame: and though the words be for the Inquiry, that they three, or any of them, &c. yet an Indictment taken before two of them is good, becauſe it is for advancement of Juſtice. And this Act is in nature of a Commiſſion to them, for other Commiſſion they need not to have: and this you may ſee in divers other Acts of Parliament of like nature. If any the houſhold ſervants conſpire the death of the Steward, Treaſurer, and Comptroller, yet by force of this Act they are Judges of the cauſe, and none other can be, and in that caſe, they

18 E.3.1.
23 Aſſ.17.
27 H.6.8.
27 H.8.13.

they will aſſiſt themſelves for their direction, with ſome grave and learned men in the laws. But if the death of any one of them be compaſſed, then it is more convenient that it be heard and determined before the other two.

Fourthly, the fourth part ſetteth forth, firſt, how the Inquiry, and after the triall ſhall be made, that is, that the Inquiry muſt be made by twelve ſad men and diſcreet perſons of the Cheque Roll of the Kings houſhold: and when the offender hath pleaded not guilty, the triall ſhall be by the like perſons. And here though this Act limiteth the inquiry to be by twelve, yet if it be Inquired of by more then twelve, the preſentment is good, but the tryall muſt be by twelve onely.

Fifthly, no challenge ſhall be made, but for malice.

Sixthly, by the contert of the whole Act, the conſpiracy, that is to be heard and determined by this Act, muſt be plotted to be done within the Kings houſhold. Vide lib. Plac. Coke fo. 482.

The offender againſt this ſtatute ſhall have the benefit of his Clergy: for whenſoever Felony is made by any ſtatute, and the benefit of Clergy is not expreſly taken away, the offender ſhall have his Clergy.

See the ſtatute of 3 & 4 E. 6. whereby amongſt other things in ſome caſe it was High treaſon, and in ſome caſe felony, to intend, or goe about to kill, or impriſon any of the Kings Privy Councell, &c. from which felony, the benefit of Sanctuary, and Clergy was taken away: but theſe treaſons and felonies are repealed by the ſtatute of 1 Mar. 3 & 4 E. 6. ca. 5.

CAP. V.

Of Hereſie.[a]

COncerning Hereſie five things fall into conſideration. Firſt, who be the Judges of Hareſie. Secondly, what ſhall be adjudged Hereſie. Thirdly, what is the judgement upon a man convicted of Hereſie. Fourthly, what the law alloweth him to ſave his life. Fifthly, what he ſhall forfeit by judgement againſt him.

Touching the Firſt, an Heretique may be convicted[a] before the Archbiſhop and other Biſhops, and other the Clergy at a generall Synod, or Convocation, as it appeareth both by our books, and by hiſtory. See the ſtatute of 25 H. 8. cap. 19. revived by 1 El. cap. 1.

[a] Bract. l. 3. fo. 123. & 124. in Conc' Oxon. Newburg. li. 2. ca. 13. 6 H. 3. Stow. Holl 203. 2 H. 4. Rot. Parl. nu. 29. Sautries caſe. Fitz. N.B. 269. a. 1 El. ca. 1.

[b] And the Biſhop of every Dioces may convict any for Hereſie, and ſo might he have done before the ſtatute of 2 H. 4. ca. 15. as it appeareth by the Preamble of that Act in theſe words. [b] Vid. 23 H. 8. ca. 9. F.N.B. ubi ſupra. 5 El. ca. 23. 10 H. 7. 17. b. Doct. & Stud. lib. 2. ca. 29. Br. 2. Mar. tit. Hereſy 1.

Whereas the Dioceſans of the ſaid Realme cannot by their juriſdiction ſpirituall, without aid of the ſaid royall Majeſty, ſufficiently correct the ſaid falſe and perverſe people, (i. Heretiques, named before) becauſe the ſaid falſe and perverſe people doe goe from Dioces to Dioces, and will not appeare before the ſaid Dioceſans, but the ſame Dioceſans and their Juriſdiction ſpirituall, and the keys of the Church with the cenſures of the ſame, do utterly contemne and deſpiſe.

Now that ſtatute doth provide, that the Dioceſan of the ſame place, ſuch perſon or perſons, &c. may cauſe to be arreſted, and under ſafe cuſtody in his priſons to be detained. From this Act and other Acts and Authorities quoted in the margent, theſe Two concluſions are to be gathered. Firſt, that the Dioceſan

Mat. Hammond Anno 21 El. Holl.1579. Stowe. 1161. Hil.9.Ja. Regis. Legates caſe.

ceſan hath juriſdiction of Hereſy, and ſo it hath been put in ure in all Queen Elizabeths reign: and accordingly it was reſolved by Flemming Chief Juſtice, Tanfield chief Baron, Williams, and Crook Juſtices, Hil.9. Ja.R. in the caſe of Legate the Heretique, and that upon a conviction before the Ordinary of Hereſy, the writ of De hæretico comburendo doth lie. Secondly, that without the aid of that Act of 2 H.4. the Diocesan could impriſon no perſon accuſed of Hereſy, but was to proceed againſt him by the cenſures of the Church. And now ſeeing, that not only the ſaid Act of 2 H. 4. but 25 H.8. c. 14. are repealed, the Diocesan cannot impriſon any perſon accuſed of Hereſy, but muſt proceed againſt him, as he might have done before thoſe ſtatutes, by the cenſures of the Church, as it appeareth by the ſaid Act of 2 H.4.c.15. Likewiſe the ſuppoſed ſtatute of 5 R.2.c.5. and the ſtatutes of 2 H.5.c.7. 25 H.8.c.14. 1 & 2 Ph.& Mar.c.6. are all repealed, ſo as no ſtatute made againſt Heretiques ſtandeth now in force: and at this day no perſon can be indicted, or impeached for Hereſie before any temporall Judge, or other, that hath temporall juriſdiction, as upon peruſall of the ſaid ſtatutes appeareth.

Vide 1 E.6. c.12. 1 El.c.1.

23 H.8. c.9.

Every Archbiſhop of this Realm may cite any perſon dwelling in any Biſhops Dioces within his province for cauſes of Hereſie, if the Biſhop, or other Ordinary immediate thereunto conſent, or if that the ſame Biſhop, or other immediate Ordinary, or Judge do not his duty in puniſhment of the ſame.

2. Touching the ſecond point, if any perſon be charged with Hereſy before the High Commiſſioners, they have no authority to adjudge any matter or cauſe to be hereſy, but onely ſuch, as hath been ſo adjudged by the authority of the Canonicall Scripture, or by the firſt four generall Councels, or by any other generall Councell, wherein the ſame was declared hereſie by the expreſſe and plain words of the Canonicall Scripture, or ſuch as ſhall hereafter be determined to be hereſy by Parliament, with the aſſent of the Convocation: for ſo it is expreſly provided by the ſaid Act of 1 El. And albeit this Proviſo extendeth only to the ſaid high Commiſſioners, yet ſeeing in the high Commiſſion, there be ſo many Biſhops, and other Divines, and Learned men, it may ſerve for a good direction to others, eſpecially to the Diocesan, being a ſole Judge in ſo weighty a cauſe.

1 El.ca.1.

No manner of Order, Act, or Determination for any matter of Religion, or cauſe Eccleſiaſticall, had or made by the Authority of the Parliament in Anno 1 El. ſhall be accepted, deemed, interpreted, or adjudged Hereſy, Schiſm, or Schiſmaticall opinion, any order, decree, ſentence, conſtitution, or law (whatſoever the ſame be) notwithſtanding.

5 R.2. Stat.2. cap.5. repealed by 1 E.6.c.12. & 1 Eliz.ca.1.

There was a ſtatute ſuppoſed to be made in 5 R.2. that Commiſſions ſhould be by the Lord Chancellor made, and directed to Sheriffs, and others, to arreſt ſuch as ſhould be certified into the Chancery by the Biſhops, and Prelates, * Maſters of Divinity, to be preachers of hereſies, and notorious errors, their fautors, maintainers, and abetters, and to hold them in ſtrong priſon, untill they will juſtifie themſelves to the law of holy Church. By colour of this ſuppoſed Act, [a] certain perſons, that held, that images were not to be worſhipped, &c. were holden in ſtrong priſon, untill they (to redeem their veration) miſerably yeelded before theſe Maſters of Divinity to take an oath, and did ſwear to worſhip images, [b] which was againſt the morall and eternall law of Almighty God. We have ſaid (by colour of the ſaid ſuppoſed ſtatute, &c.) not only in reſpect of the ſaid opinion, but in reſpect alſo, that the ſaid ſuppoſed Act, was in truth never any Act of Parliament, though it was entred in the Rolls of the Parliament, for that the Commons never gave their conſent thereunto. And therefore in the [c] next Parliament, the Commons preferred a bill reciting the ſaid ſuppoſed Act, and conſtantly affirmed, that they never aſſented thereunto, and therefore deſired that the ſaid ſuppoſed ſtatute might be aniented, and declared to be void: for they proteſted, that it was never their intent to be juſtified, and to binde themſelves and their ſucceſſors to the Prelates, more then their Anceſtors had done in times paſt: and hereunto the King gave his royall aſſent in theſe words, y pleiſt au Roy.

* In diebus illis Maſters of Divinity (and Batchelors of Divinity) now Doctors of Divinity and Batchelors.

[a] Rot.clauſ. 19 R.2. m.17. in Dorſ.

[b] Exod.20.4. Levit.26.1. Deut.5.8. & 16.22. Pſal.97.7. 1 John 5. 21.

[c] Rot.Parl. 6 R.2. nu.62. Vide 7 H.4.nu. 62. Rot.Parl.

Roy. And mark well the manner of the penning the Act: for ſeeing the Commons did not aſſent thereunto, the words of the Act be, It is ordained and aſſented in this preſent Parliament, that, &c. And ſo it was, being but by the King and the Lords.

It is to be known, that of ancient time, when any Acts of Parliament were made, to the end the ſame might be publiſhed, and underſtood, eſpecially before the uſe of printing came into England, the Acts of Parliament were ingroſſed into parchment, and bundled up together with a writ in the Kings name, under the great ſeal to the Sheriff of every County, ſometime in Latin, and ſometime in French, to command the Sheriff to proclaim the ſaid ſtatutes within his bayliwick, as well within liberties, as without. And this was the courſe of Parliamentary proceedings, before printing came in uſe in England, and yet it continued after we had the print, till the reign of H. 7.

Now at the Parliament holden in 5 R. 2. John Braibrook Biſhop of London being Lord Chancellor of England, cauſed the ſaid Ordinance of the King and Lords to be inſerted into the Parliamentary writ of Proclamation to be proclaimed amongſt the Acts of Parliament: which writ I have ſeen, the purpoſe of which writ, after the recitall of the Acts directed to the Sheriff of N. is in theſe words. Nos volentes dictas concordias, ſive ordinationes in omnibus & ſingulis ſuis Articulis inviolabiter obſervari, tibi præcipimus quòd prædictas concordias, ſive ordinationes in locis infra balivam tuam, ubi melius expedire volueris, tam infra libertates, quam extra, publicè proclamari, & teneri facias juxta formam prænotatam. Teſte Rege apud Weſtm. 26 May, Anno regni Regis R. 2. 5. But in the Parliamentary proclamation of the Acts paſſed in Anno 6 R. 2. the ſaid Act of 6 R. 2. whereby the ſaid ſuppoſed Act of 5 R. 2. was declared to be void, is omitted: and afterwards the ſaid ſuppoſed Act of 5 R. 2. was continually printed, and the ſaid Act of 6 R. 2. hath by the Prelates been ever from time to time kept from the print.

Certain men called Lollards were indicted for hereſy, upon the ſaid ſtatute of 2 H. 4. for theſe opinions, viz. Quod non eſt meritorium ad Sanctum Thomam, nec ad Sanctam Mariam de Wallingham peregrinari. 2. Nec imagines Crucifixi & aliorum Sanctorum adorare. 3. Nulli ſacerdoti confiteri niſi ſoli Deo, &c. Which opinions were ſo far from hereſy, as the makers of the ſtatute of 1 Eliz. had great cauſe to limit what hereſy was. Coram Rege Hil. 1 H. 5. Rot. 4 & 5.

And afterwards they thought not good to contain theſe opinions in any Indictment, but indicted them in general words, one of which indictments as to Lollardy and hereſy followeth. Jurati dicunt ſuper eorum Sacramentum, quod A. R. E. D. Lollardi & falſi hæretici die Jovis poſt hebdomadam Paſchæ, Anno regni Regis H. 6. poſt conqueſtum Nono, apud Abendon in Com Berks infra virg. falſò & proditoriè ut communes proditores, & inſurrectores conſpiraverunt, imaginati fuerunt, & ad invicem confœderaverunt cum quamplurimis proditoribus illis aſſociatis, & felonibus de eorum comitiva, & eorum falſa malitia præcogitata, ut communes Infidiatores altarum viarum, ad fidem catholicam deſtruendam, & ibidem falſò & proditoriè ut communes proditores, & felones dicti dñi Regis fecerunt, & ſcripſerunt diverſas falſas billas, & ſcripturas ſeditioſas, & nonnulla fidei & doctrinæ Chriſtianæ contraria continentes, & eas populo domini regis publicandas & credendas falſò, damnabiliter in diverſis locis, viz. in civitatibus London, Sarum, & villis de Coventria & Marleburgh, nequiter poſuerunt, fixerunt, & projecerunt, ac indies ſic ſcribere, affigere & projicere & ponere non ceſſant, nec formidant, in graviſſimam majeſtatis, & coronæ dignitatis Regis noſtri offenſam, & Chriſtianæ fidei ludibrium, & pacis dicti domini regis perturbationem, & omnium Chriſti fidelium injuriam & contemptum. Which generall indictment, and all other of like form were utterly inſufficient in law: For albeit the words of the ſtatute be generall, yet the indictment muſt contain certainty, whereunto the party indicted may have an anſwer. Alſo where the parties are indicted, ut communes inſidiatores viarum, that alſo is inſufficient, as it appeareth by the ſtatute of 4 H. 4. ca. 2.

Indictment generall. Vide ſupra ca. 1. Verbo, Per overt fait. Lollardi & falſi hæretici.

Communes Infidiatores viarum. Vide ſup. c. 1. f. 5. Ad fidem Catholicam deſtruendã. Diverſas falſas billas & ſcripturas, &c.

John

Mich. 5 E. 4. Rot. 143. Coram Rege. In rationabili parte bonorum.

John Keyſer was excommunicated by the greater excommunication before Thomas Archbiſhop of Canterbury, and Legate of the Apoſtolique See, at the ſuit of another, for a reaſonable part of goods, and ſo remained eight months: The ſaid Keyſer openly affirmed that the ſaid ſentence was not to be feared, neither did he fear it. And albeit the Archbiſhop, or his Commiſſary hath excommunicated me, yet before God I am not excommunicated: and he ſaid that he ſpake nothing but the truth, and it ſo appeared; for that he the laſt harveſt ſtanding ſo excommunicate, had as great plenty of wheat, and other grain, as any of his neighbors, ſaying to them in ſcorn (as was urged againſt him) that a man excommunicate ſhould not have ſuch plenty of wheat. The Archbiſhop denying theſe words to be within the ſaid Act of 2 H. 4. did by his warrant in writing comprehending the ſaid cauſe, by pretext of the ſaid Act commit the body of the ſaid Keyſer to the Gaol at Maidſtone, for that (ſaith he) in reſpect of the publiſhing of the ſaid words, dictum Johannem non immeritò habemus de hæreſi ſuſpectum. By reaſon whereof the ſaid John Keyſer was impriſoned in Maidſtone Gaol, and in priſon detained under the cuſtody of the Keeper there, untill by his counſell he moved Sir John Markham then Chief Juſtice of England, and other the Judges of the Kings Bench, to have an Habeas corpus, and thereupon (as it ought) an Habeas corpus was granted: Upon which writ the Gaoler returned the ſaid cauſe, and ſpecial matter, and withall, according to the writ, had his body there. The Court upon mature deliberation peruſing the ſaid ſtatute, and upon conference with Divines) reſolved, that upon the ſaid words Keyſer was not to be ſuſpect of Hereſy within the ſaid ſtatute, as the Archbiſhop took it. And therefore the Court firſt bayled him, and after he was delivered: for that the Archbiſhop had no power by the ſaid Act for thoſe words to commit him to priſon.

Mich. 11 H. 7. Rot. 327. In communi banco.

Hillary Warner being an Inhabitant within the parish of S. Dunſtans in the Weſt, held opinion, and publiſhed there, and in divers other places, quòd non tenebatur ſolvere aliquas decimas Curatori, ſive Eccleſiæ parochiali ubi inhabitabat. Whereupon Richard Biſhop of London commanded Edward Vaughan and others to arreſt the ſaid Hillary Warner: by force whereof they did arreſt him, and detained him in priſon a day and a night, and then he eſcaped. Hillary Warner brought his Action of falſe impriſonment againſt Edward Vaughan and others: In barre whereof the Defendants pleaded the ſtatute of 2 H. 4. and that the Plaintif held and publiſhed the opinion aforeſaid; which opinion was contra fidem Catholicam, ſeu Determination Sanctæ Eccleſiæ, and that the Defendants, as ſervants to the ſaid Biſhop, and by his commandment did arreſt the Plaintif, and juſtified the impriſonment: whereupon Hillary Warner the Plaintif demurred in law, and after long and mature deliberation it was by Brian Chief Juſtice, and the whole Court of Common Pleas adjudged, that the ſaid opinion was not within the ſaid ſtatute of 2 H. 4. for that it was an error, but no Hereſy. Which I have the rather reported, for that the Reporter of this caſe did not only miſreport the time of the bringing of the Action, but the ſtatute, which was the ground of the matter in law, and leaveth out the judgement. The record it ſelf is worthy the reading.

Hil. 10 H. 7. f. 17.

Upon that which hath been ſaid touching the ſaid ſtatute of 2 H. 4. Four concluſions do neceſſarily follow. Firſt, that ſeeing, that many opinions were by the Biſhops taken to be hereſy, which in troth had no ſhadow of hereſy, and ſo miſtaken, and unjuſtly extended by the Biſhops further then the Purview, and true intention thereof, as by that which hath been, and might be ſaid, appeared, the makers of the ſaid Act of Parliament of 1 El. had great reaſon to limit (as hath been ſaid) what opinions ſhould be judged Hereſy by authority of that commiſſion grounded upon that Act. Secondly, that if any Eccleſiaſticall Judge or Commiſſioner ſhall by pretext of any ſtatute, or other cauſe, commit any man to priſon, upon motion in Court on the behalf of the party impriſoned, the Judges of the Common Law ought to grant an Habeas corpus for him: upon the return of which writ, it ſhall appear to the Judges, that the impriſonment is well warranted

See in the ſecond part of the Inſtitutes, the expoſition upon the ſtatute of *Artic. Cleri*, the reſolution of all the Judges of England to the 21 and 22 articles, or objections.

warranted by law, the party ſhall be remanded: and if the impriſonment be without warrant of law, then the party ought to be delivered. Thirdly, if the impriſonment be not warranted by law, the party impriſoned may have his action of falſe impriſonment, and recover his damages. Fourthly, that when an Act of Parliament is made concerning matter meerly ſpirituall, as Hereſie, &c. yet that Act being part of the laws of the Realm, the ſame ſhall be conſtrued and interpreted by the Judges of the Common Laws, who uſually confer with thoſe that are learned in that profeſſion. But let us now deſcend to the third point.

3. To the third. [a] It appeareth by Bracton, Britton, Fleta, Stanford, and all our Books, that he that is duly convict of Hereſie, ſhall be burnt to death.

4. To the fourth. [b] The Eccleſiaſticall Judge at this day cannot commit the perſon that is convict of Hereſie to the Sheriffe, albeit he be preſent, to be burnt; but muſt have the Kings Writ De hæretico comburendo, according to the Common Law: for now all Acts of Parliament (as hath been ſaid before) againſt Hereticks are repealed. And the reaſon wherefore Hereſie is ſo extremely and fearfully puniſhed, is, for that Gravius eſt æternam, quam temporalem lædere majeſtatem: and Hæreſis eſt lepra animæ. [c] The party duly convicted of Hereſie, may recall, and abjure his opinion, and thereby ſave his life, but a Relapſe is fatall: For as in caſe of a diſeaſe of the body, after recovery, recidivation is extremely dangerous: So in caſe of Hereſie (a diſeaſe of the ſoule) a relapſe is irrecoverable. And as he that is a Leper of his body, is to be removed from the ſociety of men, leſt he ſhould infect them, by the Kings Writ De leproſo amovendo: So he that hath lepram animæ, that is, to be convicted of Hereſie, ſhall be cut off, leſt he ſhould poyſon others, by the Kings Writ De hæretico comburendo. But if the Heretick will not after conviction abjure, he may by force of the ſaid Writ [d] De hæretico comburendo be burnt without abjuration.

5. As to the fifth. [e] The ſtatute made in the 2 year of H. 5. cap. 7. whereby the forfeiture of lands in fee-ſimple, and goods, and chattels was given in caſe of Hereſie, ſtandeth repealed by the Act of 1 Eliz. cap. 1. The Books that ſpeak of this forfeiture are grounded upon the ſaid Act of 2 H. 5. which then ſtood in force, ſaving 5 R. 2. which was before that ſtatute: for there, though Belknap ſwore, Per ma foy ſi home ſoit miſcreant, ſa terre eſt forfeitable, & le ſeigniour avera ceo p voy deſcheate; yet was his opinion never taken for law: for neither lands, nor goods [f] before the making of that ſtatute of 2 H. 5. were forfeited by the conviction of hereſie, becauſe the proceeding therein is meerly ſpirituall, pro ſalute animæ, and in a Court that is no Court of Record. And therefore the conviction of hereſie worketh no forfeiture of any thing that is temporall, viz. of lands or goods. [g] For what cauſe the ſaid hereticks were called Lollards you may reade in Caudries caſe, and Linwood thereto agreeth. * And it is to be obſerved, that in proceeding againſt Lollards, the Prelats, beſides their opinions, did charge them with hainous offences: As conſpiracy with multitudes of people, inſurrection, rebellion, or ſome other treaſon, or great crimes.

We have ſpoken thus much of this argument, becauſe there be divers wandring opinions concerning ſome of theſe points, that are not agreeable to the law, as it ſtandeth at this day. See the fourth part of the Inſtitutes, cap. Chancery, in the Articles againſt Cardinall Woolſey. Artic. 44.

[a] Mir. cap. 4. de Majeſtie. Bracton, ubi ſup. Britton cap. 9. Fleta lib. 1. ca. 35. Regiſter. F. N. B. 269.

[b] F. N. B. 269. Rot. Par. 2 H. 4. nu. 9. Sautrys caſe. Bre de hæretico comburendo per regem et concilium in Parliamento.

[c] 2 Mar. tit. Hereſie. Br. 7.

[d] 2 Mar. ubi ſup.

[e] Vid. Doct. et Stud. lib. 2. ca. 19. Br. tit. Forfeiture 112. Stan. pl. cor. 35. L. 2 Mar. Br. tit. Hereſie.

[f] Vid. hereafter in caſe of Piracy.

[g] Lib. 5 Caudries caſe. fol. 25. b. * 1 H. 5. fo. 6. 2. Rot. Parl. 5 H. 5. nu. 11. in the caſe of Sir *John Oldcaſtle.* Paſch. 9 H. 6. *John Sharps* caſe, &c. Rot. Parl. 7 H. 4. nu. 67. 11 H. 4. nu. 29. 3 H. 5. nu. 39. 1 H. 6. nu. 29.

CAP.

CAP. VI.

Of Felony by Conjuration, VVitchcraft, Sorcery, or Inchantment.

[a] 33 H.8.ca.8. 1 E.6.cap.12. [b] Inter leges Alvéredi fo 23. Edwardi & Guthruni,cap.11. Ethelſtani,ca.6. Canuti. 4,5. [c] 5 Eliz.ca.16. 1 Jac.cap.12.

The firſt Act of Parliament that made any of theſe offences felony,was the ſtatute [a] of 33 H.8. which was repealed by the ſtatutes of 1 E.6. cap.12, and 1 Mariæ. But [b] before the Conqueſt it was ſeverely puniſhed: ſometimes by death,ſometimes by exile,&c. [c] And after, it was made felony by the ſtatute of 5 Eliz. and again by 1 Jac. which repealeth 5 Eliz.

A Conjurer deſcribed.

A Conjurer is he that by the holy and powerfull names of Almighty God invokes and conjures the Devill to conſult with him, or to do ſome act.

A Witch deſcribed.

A Witch is a perſon that hath conference with the Devill, to conſult with him,or to do ſome act.

An Inchanter deſcribed.

An Inchanter, Incantator, is he, or ſhe,qui carminibus, aut cantiunculis Dæmonem adjurat. They were of ancient time called Carmina, becauſe in theſe dayes their Charms were in verſe.

Carminibus Circe ſocios mutavit Ulyſſis.
By Charms in Rhyme (O cruell Fates!)
Circe transform'd Ulyſſes mates.

And again. Carmina de Cœlo poſſunt detrudere Lunam.
By Rhymes they can pull down full ſoon,
From lofty ſky the wandring Moon.

* A Sorcerer deſcribed. Exod.cap.22.17. Deut.ca.18.10, 11,12. Num.ca.23.23. 1 Reg.ca.15.23. [d] Linwood de officio Archi-presb. § Igmeantia. * Mir.cap.1. § 5. & cap.2 § 12. & cap.4. § De Majeſtie. Brit.fo. 16.b.& 71 F.N.B. 269.b. [e] Int.leges Edw. ca.11.fo.55. & Ethelſtani ca.6. fo.60. & Canuti cap.5. fo.5. 45 E.3.17.b. * Some think that this ſhould be the Oath of Allegiance, *Que il ſerra foiall & loiall,&c.* Vid.25 E.3.42.b. coron.131. See hereafter ca.74. of perjury, Verb. That as well the Judge, &c.

* A Sorcerer, Sortilegus, quia utitur ſortibus in cantationibus Dæmonis. Thou ſhalt not ſuffer a Witch to live. Non eſt augurium in Jacob, nec divinatio in Iſrael. And the Holy Ghoſt hath compared the great offence of Rebellion to the ſin of Witchcraft.

And here it juſtly may be demanded, what puniſhment was againſt theſe deviliſh and wicked offenders before theſe ſtatutes, which were made of very late time.

And it appeareth by our ancient [d] books that theſe horrible and deviliſh offenders, which left the everliving God, and ſacrificed to the Devill, and thereby committed Idolatry, in ſeeking advice and aid of him, were puniſhed by death. * The Mirror ſaith, Que ſorcery & devinal ſont members de Hereſie. And there he deſcribeth Hereſie. Hereſie eſt un mauuaſe & faux creance ſurdant de error en la droit foy Chriſtien: and after ſaith, Le judgement de Hereſie eſt dée arſe in cendre. And herewith agreeth Britton: Sorcerers, Sorcereſſes, &c. & miſcreants ſoient arſes. And Fleta: Chriſtiani autem Apoſtatæ, ſortilegi, & hujuſmodi detractari debent, & comburi. And burning then was, and yet is the puniſhment for Hereticks. So as the conuſance of theſe offences, if they be branches of hereſie, (as the law was then taken) belonged (as to this day hereſie doth) to Eccleſiaſticall Judges. In which caſe when they have given ſentence, there lieth a Writ De hæretico comburendo.

I have ſeen a report of a caſe in an ancient Regiſter, that in October Anno 20 H.6. Margery Gurdeman of Eye, in the County of Suffolk, was for Witchcraft and conſultation with the Devil, after ſentence and a relapſe, burnt by the Kings Writ De hæretico comburendo. [e] And this agreeth with Antiquity, for Witches, &c. by the laws before the Conqueſt were burnt to death.

A man was taken in Southwark with a head and a face of a dead man, and with a book of Sorcery in his male, and was brought into the Kings Bench before Sir John Knevett then Chief Juſtice: but ſeeing no indictment was againſt him, the Clerks did ſwear him, that from thenceforth * he ſhould not be a Sorcerer, and was delivered out of priſon, and the head of the dead man and the book

of

of Sorcery were burnt at Tuthill at the coſts of the priſoner. So as the head and his book of Sorcery had the ſame puniſhment, that the Sorcerer ſhould have had by the ancient law, if he had by his ſorcery prayed in aid of the Devill.

The Holy Hiſtory hath a moſt remarkable place concerning the reprobation and death of King Saul. Mortuus eſt ergo Saul propter iniquitates ſuas, eò quod prævaricatus ſit mandatum Domini, & non cuſtodierit illud, ſed inſuper Pythonissam conſuluerit, nec ſperaverit in Domino, propter quod interfecit eum, & tranſtulit regnum ejus ad David filium Iſai. So Saul died for his tranſgreſſion which he committed againſt the Lord, even againſt the Word of the Lord which he kept not: And alſo for asking counſell of one that had a Familiar Spirit, to enquire of it, and enquired not of the Lord; therefore he ſlew him, and turned the kingdome unto David the ſonne of Iſai.

1 Chron. chap. 10. v. 13, 14. 1 Reg. 15. 23. * Nota. 1 Reg. 28. 8.

Therefore it had been a great defect in government, if ſo great an abomination had paſſed with impunity. And this is the cauſe, that we have proved how and in what manner Conjuration, Witchcraft, &c. were puniſhed by death, &c. before the making of the ſaid late ſtatutes.

But now let us peruſe the Statute made in the Firſt peare of King James, which only ſtandeth in force, and divideth it ſelf into Five ſeverall branches.

1 Jac. cap. 12.

1. ¶ If any perſon or perſons ſhall uſe, practiſe, or exerciſe any Invocation or Conjuration of any evill and wicked Spirit.

Here the Devill by the holy, and powerfull names of Almighty God is invoked (as hath been ſaid:) and this Invocation, or conjuration of a wicked Spirit is felony, without any other act or thing, ſave only the apparition of the ſpirit. See W. 1. cap. 1. in the Oath of the Champion, &c.

2. ¶ Or ſhall conſult, covenant with, entertaine, employ, feed, or reward, any evill or wicked Spirit, to, or for any intent or purpoſe.

By this branch, if any conſult, &c. (howſoever the wicked ſpirit appeareth and commeth) theſe actions (here mentioned) with or to that wicked ſpirit, to or for any intent or purpoſe, is felony without any other act or thing.

3. ¶ Or take up any dead man, woman, or child, out of his, her, or their grave, or any other place where the dead body reſteth, or the skin, bone, or any part of a dead perſon, to be imployed or uſed in any manner of Witchcraft, Sorcery, Charme, or Inchantment.

Albeit the offender that commits theſe barbarous, and inhumane dealings with the bodies of the dead, do not actually imploy or uſe them in witchcraft, ſorcery, charme, or inchantment: yet if he did them of purpoſe to uſe therein, it is felony, for the words of this branch be, [to be imployed or uſed in any manner of witchcraft, &c.].

4. ¶. Or ſhall uſe, practiſe, or exerciſe any Witchcraft, Inchantment, Charme or Sorcery, whereby any perſon ſhall be killed, deſtroyed, waſted, conſumed, pined, or lamed, in his, or her bodie, or any part thereof.

By this branch no other witchcraft, inchantment, charme, or ſorcery (then is before ſpecified) is felony, unleſſe by means thereof ſome perſon be killed, deſtroyed, waſted, conſumed, pined or lamed, &c. Which words have reference only to this laſt generall clauſe.

5. ¶ That then every ſuch offender or offenders, their aiders, abetters, and counſellors, being of any the ſaid offences duly and lawfully convicted, and attainted, ſhall ſuffer paines of death, as a felon, or felons, and ſhall loſe the priviledge, and benefit of Clergie, and Sanctuary.

Albeit acceſſories before be here ſpecially named, yet acceſſories after may be of this felony, as afterwards is ſaid upon the ſtatute of 3 H. 7. for taking away of women, and upon the ſtatute of 8 H. 6. for ſtealing of Records.

The ſecond part of this Act concerneth Felony in a ſecond degree; and the branches thereof are alſo in number Five.

¶ 1. If any person, or persons take upon him or them, by Witchcraft, Inchantment, Charme, or Sorcery, to tell or declare, in what place any treasure of gold or silver should or might be found, or had in the earth, or other secret places.

The mischiefs before this part of the Act was: That divers Impostors, Men and Women, would take upon them to tell, or doe, these Five things here specified, in great deceipt of the people, and cheating and conseuing them of their money, or other goods. Therefore was this part of the Act made, wherein these words [take upon him or them] are very remarkable. For if they take upon them, &c. though in truth they doe it not, nor can doe it, yet are they in danger of this first branch.

¶ 2. Or where goods, or other things lost, or stoln should be found or become.

Herein they become offenders, if they take upon them as aforesaid. And note, the taking upon them, to tell and declare, goverue both these branches.

¶ 3. Or to the intent to provoke any person to unlawfull love.

Herein also they become offenders, by taking upon them, as is aforesaid. Here is the change of a new Verb, viz. [to provoke] So as the sense is, If any person or persons shall take upon him or them by witchcraft, inchantment, charme or sorcery, to the intent, to provoke any person to unlawfull love.

¶ 4. Or whereby any cattell or goods of any person shall be destroyed.

The Letter of this branch is this: If any person shall take upon him by witchcraft, inchantment, charme or sorcery, whereby any cattell or goods of any person should be destroyed. Although this be not sententious, yet the meaning thereof is to be taken, by supplying these words after sorcery [any thing] and not to turn [destroyed] into the Infinitive Mood, as the rest be; for then it satisfieth not the meaning of the makers: for a taking upon them to destroy cattell, &c. if they be not destroyed, is not within the danger of this Act, and therefore must be supplyed as is aforesaid.

¶ 5. Or to hurt or destroy any person in his or her body, although the same be not effected or done.

As in the case of cattell or goods, the destruction must be (as is aforesaid) effected and done: so in case of the person of man, woman, or child, though the hurt be not effected, or done; yet is the taking upon him, &c. to hurt or destroy any person, &c. within this branch.

¶ Being therefore lawfully convicted.

Here [convicted] is taken in a large sense for attainted, and the rather, for that after in this Act the words be [lawfully convicted and attainted, as is aforesaid.]

¶ Shall for the said offence, &c.

Here are expressed the punishments inflicted upon these Impostors, Mountebankes, and cheating Quacksalvers, viz. 1. To suffer imprisonment by the space of a whole yeer without bail or mainprise. 2. Once every quarter of the yeare these Mountebankes are to mount the Pillory, and to stand thereupon in some Market Towne six houres, and there to confesse his or her error, and offence.

¶ And if any person being once convicted of the same offences, &c.

Here is also [convicted] taken for attainted, for he shall not be drawn in question for the second offence, to make it felony, till judgement be given against him for the first; for the Indictment of felony recites the former attainder, and the second offence must be committed after the judgement. And so it is in the case of Forgery upon the statute of 5 Eliz. and in case of conveying of Sheep alive out of this Realme, and some others.

5 Eliz. cap. 14.
8 Eliz. cap. 3.

¶ Saving to the wife of such person as shall offend in any thing contrary to this Act, her title of dower, and also to the heire and succes-

sor

ceſſor of every perſon, his or their titles of inheritance, ſucceſſion, and other rights, as though no ſuch attainder of the Anceſtor or Predeceſſor had been made.]

The judgement againſt a felon is, that he ſhall be hanged by the neck untill he be dead: and albeit nothing elſe is expreſſed in the judgement, yet by the Common law many things are therein implied; as the loſſe of his wives Dower, the loſſe of his inheritance, corruption of his blood, forfeiture of his goods, &c. Now a ſaving will ſerve for any thing, that is implied in the judgement, as in this caſe for the wives Dower, and alſo for the heires inheritance, and for all the reſt of the things implied in the judgement. But a ſaving will not ſerve againſt the expreſſe judgement in caſe of felony, for that ſhould be repugnant; as ſaving the life of the offender ſhould be void, becauſe it is repugnant to the expreſſe judgement, viz. that he ſhall be hanged by the neck untill he be dead. Alſo where the ſaving is to the heir, it is well ſaved by the name of the heir, becauſe notwithſtanding the forfeiture implied in the judgement, his inheritance is ſaved, and by conſequent the blood not corrupted, for if the blood were corrupted, he could not inherit as heir, but notwithſtanding this ſaving, the lands are forfeited during his life.

See the 1. part of the Inſtitutes. Sect. 747.

Vide lib. 1. in the caſe of Alton Woods. fo.

The ſtatute of 5 Eliz. for preſervation of the wives Dower, and the heirs inheritance, in caſe of forgery, is penned in this form. Provided alway, that ſuch attainder of felony ſhall not in any wiſe extend to take away the Dower of the wife of any ſuch perſon attaint: nor to the corruption of blood, or diſherſon of any heir or heirs of any ſuch perſon attaint.

5 El. ca. 14.

The words of the ſtatute of 8 Eliz. be, Provided always that this Act ſhall not extend to corruption of blood, or be prejudiciall or hurtfull to any woman claiming Dower by or from any ſuch offender, &c. Wherein it is to be obſerved, that by the avoidance of corruption of blood, the inheritance is implicdly ſaved. See the manner of the penning of the Act of 31 Eliz. concerning this matter and divers others.

8 El. ca. 3.

31 El. ca. 4.

And ſurely it is very convenient that when new felonies be made by Act of Parliament, that ſuch ſavings or proviſions be made both for the wives Dower, and the heires inheritance, as were had and made in theſe preſidents.

See the Statute of 3 Ja. ca. 4.

CAP. VII.

Of Murder.

HAving [a] now paſſed High treaſon, Petit treaſon, Miſpriſion of treaſon, Felony by the ſtatute of 3 H. 7. Hereſy, and Conjuration, Witchcraft, &c. We are next in order to treat of felonies in generall: and of all felonies, murder is the moſt hainous. Inter leges Canuti, ca. 61. fo. 118. Cædes manifeſtæ numerantur inter ſcelera nullo humano jure expiabilia. See here ca. Pardon. And of all murders, murder by poyſoning is the moſt deteſtable. Wherefore firſt of murder. Murdrum is derived of the Saxon word Mord.

[a] See the 1. pt. of the Inſtit. for the word Murder. Sect. 287. and for Felony. Sect. 502. & 745. See the 2. part of Inſtit. Marlb. ca. 25. Cuſt. de Norm. ca. 68.

[b] Murder is when a man of ſound memory, and of the age of diſcretion, unlawfully killeth within any County of the Realm any reaſonable creature in rerum natura under the Kings peace, with malice fore-thought, either expreſſed by the party, or implied by law, ſo as the party wounded, or hurt, &c. die of the wound, or hurt, &c. within a yeare and a day after the ſame.

b The definition of murder. Vid. devant. ca. Treaſon. Verb. Quant home, &c. Bract. l. 3. fol. 120. 121, 134, 135. Brit. fo. 5. 18. Fleta lib. 1.

Hereof we will ſpeak, together with ſome things concerning the acceſſories to the ſame, and leave the reſidue to others, that have written thereof. Now let us examine the principall parts of this deſcription.

cap. 23. & 30. Mirror cap. 1. §. ca. 2. §. 11. de Appeal de homicide. Tr. 32 E. 3. Coram Rege Rot. 15. 25 E. 3. 28, 26 Aſſ. p. 27. 3 E. 3. cor. 383. 3 H. 7. ca. 1. 3 H. 7. 1. 12. 21 H. 7. 31. 3 Co. Coron. 389. 3 Ma. Dier 104. b. See the firſt part of the Inſtit. 104.

Trin. 31 E. 3. Coram Rege. Rot. 54. Per mort. canis.

¶ Killing.] As by Poyſon, Weapon, ſharp or blunt, Gun, Croſbow, Cruſhing, Bruiſing, Smothering, Suffocating, Strangling, Drowning, Burning, Burying, famiſhing, throwing down, inciting a dog or beare, &c. to bite, or hurt, &c. whereof death enſueth. laying a ſick man in the cold, &c.

Bract. l. 3. fo. 121. Bri fo. 14. See lib. Intr. Coke 25. Lib. 4. fo. 44. Vaux's caſe. Lib. 9. fo. 81. Agnes Gores caſe. Deut. 28. 24. Curſed is he that ſmiteth his neighbour ſecretly.

Poyſon, (Venenum, à venis, quia à venis permeat) is, as hath been ſaid, the moſt deteſtable of all, becauſe it is moſt horrible, and fearfull to the nature of man, and of all others can be leaſt prevented, either by manhood or providence: and that made Fleta to ſay, Item nec per patriam ſe defendere debet quis de veneno dato, ſed tantum per corpus ſuum, eo quod initium facti non fuit tam publicum, quod ſciri poterit à patria, &c. but that is not holden for law at this day.

[a] This offence was ſo odious, that by Act of Parliament it was made High Treaſon, and inflicted a more grievous and lingring death then the Common law preſcribed, viz. That the offender ſhould be boyled to death in hot water: Upon which ſtatute [b] Margaret Davy a young woman was attainted of High Treaſon for poyſoning of her miſtris, and ſome others were boyled to death in Smithfield the 17 day of March in the ſame yeer. But this Act was too ſevere to live long, and therefore was repealed by 1 E. 6. cap. 12. and 1 Mar. cap. 1.

a 22 H. 8. c. 9. Read the ſtatute. Dier 33 H. 8. fol. 50. 2. Saccombes caſe. b Anno 33 H 8.

All the ancient Authours, ubi ſupra, of old time defined murder to be, Occulta hominis occiſio, &c. when it was done in ſecret, ſo as the offender was not known: but now it is taken in a larger ſenſe.

Britton fo. 14.

Britton mentioneth another kind of murder (which is not holden for murder at this day) when he ſaith: Ceux auxi que fauxement pur lower, ou en autre manner ount aſcun home damne ou fait damner au mort, &c. yet this is murder before God. And David killed Uriah with his pen, and theſe men with their tongue.

¶ Within any County of the Realm.] [c] If two of the Kings ſubjects goe over into a forain Realm and fight there, and the one kill the other, this murder being done out of the Realm, cannot be for want of triall heard and determined by the Common law: [d] but it may be heard and determined before the Conſtable and Marſhall.

c 13 H. 4. 5 & 6. Stanf. pl. cor. 65. Mic. 25 & 26. El. So reſolved in Dowties caſe. d 13 R. 2. c. 2. 1 H. 4. ca. 14. Rot. Parl. 8 H. 6. nu. 38.

If A. give B. a mortall wound in a forain Country, B. commeth into England and dieth: this cannot be tried by the Common law, becauſe the ſtroak was given there, where no Viſne can come, but the ſame ſhall be heard and determined before the Conſtable and Marſhall: for the words of the ſtatute of 13 R. 2. be: To the Conſtable it pertaineth to have conuſance of Contracts, concerning deeds of armes, or of warre out of the Realm, and alſo of things that touch arms, or war within the Realm, which cannot be determined or diſcuſſed by the Common law.

13 R. 2. c. 2.

If a man be ſtricken upon the high ſea, and dieth of the ſame ſtroke upon the land, this cannot be enquired of by the Common law, becauſe no Viſne can come from the place, where the ſtroke was given, (though it were within the ſea pertaining to the Realm of England, and within the liegeance of the King) becauſe it is not within any of the Counties of the Realm. Neither can the Admirall heare and determine this murder, becauſe though the ſtroke was within his juriſdiction, yet the death was infra corpus comitatus, whereof he cannot inquire: neither is it within the ſtatute of 28 H. 8. becauſe the murder was not committed on the ſea. But by the ſaid Act of 13 R. 2. the Conſtable and Marſhall may heare and determine the ſame. And before the making of the ſtatute of 2 E 6. If a man had been feloniouſly ſtricken, or poyſoned in one County, and after had died in another County, no ſufficient Indictment could thereof have been taken in either of the ſaid Counties, becauſe by the law of the Realm, the Jurors of one County could not inquire of that, which was done in an other County. It is provided by that Act that the Indictment may be taken, and the Appeale brought in that County, where the death doth happen. Before the making

Lib. 2. fo. 93. Tr. 25 Eliz. in Lacies caſe. Forteſcue ca. 32. fo. 38.

28 H. 8. ca. 13.

2 E. 6. ca. 24.

king of this Statute, the Appeal might have been brought in either of the said Counties, but the triall must have been out of both: but when both Counties could not joyn, then both Appeal and Indictment failed at the Common law.

18 E. 3. 32.
9 H. 6. 63.
3 H. 7. 12.
4 H. 7. 18.
6 H. 7. 10.

But here be Two things to be observed: First, that in case of treason or misprision thereof, or of felony or misprision of the same within the Realm, the party ought to be indicted within the same County, where the fact is done, and it cannot be alleaged in any other County, then in truth where it was done. And therefore in the case aboveſaid neither the ſtroke, nor poyſoning, nor the death, though they be tranſitory, can be alleaged in the Indictment or Appeal, but where in truth they were done. Secondly, the Statute of 2 E. 6. extendeth not where one is ſtricken or poyſoned on the ſea, or in any forain Kingdome, and dieth in England, but where one is ſtricken or poyſoned in one County, and dieth in another.

This Act extendeth, where the murder, or felony is done in one County, and another ſhall be acceſſory in another County: whereof you may read at large in the Lord Sanchars caſe.

Lib. 9. fo. 117, 118. &c.

Richard Weſton being Sir Thomas Overburies Keeper in the Tower of London, did poyſon him in that part of the Tower which is within London. R. Earl of S. and F. his wife, James Franklin and Anne Turner were acceſſories before the fact in the County of Midd. and Sir Gervaſe Helwys Lieutenant of the Tower was acceſſory before the fact in London. Now upon this Statute of 2 E. 6. ca. 24. divers queſtions were reſolved: First, if the acceſſory be in Midd. where the Kings Bench ſit, and the principall is attainted in another County, the Kings Bench may try the acceſſory, as it was reſolved in the Lord Sanchars caſe, ubi ſupra. 2. If the indictment of the acceſſory be taken in the Kings Bench, the Juſtices ſhall not by force of the Statute of 2 E. 6. write in their own names, quia placita ſunt coram Rege, & non coram Juſticiariis, but remove the Record by the Kings writ of Certiorari. 3. Divers preſidents were ſhewn, that where acceſſories before the fact were in Midd. where the Kings Bench did ſit, &c. and the attainder of the principall had been in another County, the Juſtices of the Kings Bench have removed the attainder by writ of Certiorari before them. See the Lord Sanchars caſe, ubi ſupra, and another caſe where the principall was attainted in the County of Oron, before Juſtices of Oier and Terminer, and the acceſſory was in Midd. where the Kings Bench ſate. 4. Richard Weſton being attainted as principall in the city of London, proceeding was to be had againſt James Franklin and Anne Turner in the Kings Bench where they were indicted. The queſtion was, if the Kings Bench ſhould remove the record of the attainder of the principall by Certiorari before them, and after the ſaid Earl and his wife ſhould be tryed by their Peeres before the Lord Steward, whether the Lord Steward might write to the Kings Bench for the record of the attainder: for the words of 2 E. 6. be, Shall write to the Cuſtos Rotulorum, or Keepers of the Record where ſuch principall ſhall hereafter be attainted or convict. And to prevent all doubts, a ſpeciall writ was directed according to the words of the Act, to the Commiſſioners of Oier and Terminer, to certifie whether the principall was attainted, convicted, or acquited, and they made a particular certificate accordingly: ſo as the record of the attainder remained ſtill with the Commiſſioners of Oier and Terminer in London. 5. It was reſolved upon conſideration had of the whole Act, that the words of the Act being, the Juſtices of Gaol Delivery, or of Oier and Terminer, or other there authoriſed, ſhall proceed, &c. the ſame extend to the high Steward to write, &c.

Mich. 13 Jac. Regis, Sir Thomas Overburies caſe. See hereafter ca. 62. of Indictments more of this caſe.

The Indictment of Richard Weſton was, that he 9 Die Maii Anno 11. Regis Jacobi, &c. gave to Sir Thomas Overbury a poyſon called Reſtacre in broth, which Sir Thomas Overbury not knowing it, received: Et ut idem Ric. Weſton præfatum Thomam Overbury magis celeriter interficeret, & murdraret, 1 Junii Anno 11 Jac. Regis, gave unto him another poyſon called white Arſenick. And that Richard Weſton 10 Julii, Anno 11 Jac. Regis, gave unto him

him poyſon, called Mercury ſublimat, in Tarts, &c. ut præd. Thomam magis celeriter interficeret, & murdraret. And that a perſon unknown, by the procurement, and in the preſence of Richard Weſton, 14 Septemb. 11 ſupradicto, gave to the ſaid Thomas a Oyſter with poyſon in it, called Mercury ſublimat, &c. ut præd. Thomam magis celeriter interficeret & murdraret. Et prædict. Thomas Overbury de ſeperalibus venenis prædict. & operatione inde à prædict. ſeperalibus temporibus, &c. graviter languebat uſque 15 diem Septemb. Anno 11 ſupradicto, quo quidem 15 die Septembris, &c. prædictus Thomas de ſeperalibus venenis prædictis obiit venenatus. And this was reſolved to be a good Indictment by all the Juſtices of the Kings Bench, although it doth not appeare in particular, of which of the ſaid poyſons he died. For the ſubſtance of the Indictment was, whether he was poyſoned or no, by the ſaid Richard Weſton. And upon this indictment he was arraigned, pleaded not guilty, and had judgement given againſt him. And afterwards Anne Turner, Sir Gervaſe Helwis Lieutenant of the Tower, and Richard Franklin the Phyſitian, were indicted as acceſſories before the fact, and arraigned, and pleaded not guilty: and it fell out in evidence, that Franklin had prepared divers other poyſons, then were contained in the Indictment, as the powder of Diamonds, the powder of Spiders, Lapis Cauſticus, and Cantharides, over and beſides the poyſons in the Indictment. And it was reſolved, that any of theſe was ſufficient to prove the indictment; for the ſubſtance of the indictment was poyſoning, which (as hath been ſaid) is ſecret: See Michallis caſe ubi ſupra. And after verdict, judgement was given againſt all theſe acceſſories. And after, the ſaid Earle and the Counteſſe his wife were indicted as acceſſories before the fact, and were arraigned before the Lord Chancellor of England, and hac vice, Lord High Steward of England: and upon the arraignment of the Counteſſe, ſhe confeſſed the indictment: and when the Clerke of the Crowne did aſk her, What ſhe could ſay why judgement of death ſhould not be given againſt her? ſhe ſaid, That ſhe could ſay much againſt her ſelfe, but nothing for her ſelfe. And then the Lord Steward gave judgement of death againſt her, viz. That ſhe ſhould be hanged by the neck till ſhe were dead: and adjourned his Commiſſion, (as it was reſolved he might do by Law) untill the next day: and then the ſaid Earle was arraigned, and pleaded not guilty, and put himſelf upon his Peers, who found him guilty: and thereupon the Lord Steward gave the like judgement againſt him. Which caſe we have recited the more largely for two cauſes. Firſt, for that we remember not any of the Nobility of this Realm to have been attainted in former times for poyſoning of any. Secondly, for that it is the firſt caſe that fell out upon the ſaid Act of 2 E. 6. in caſe of triall by Peers of any that was Noble, and the proceeding herein was by great adviſement. But now let us returne where we left.

¶ Reaſonable creature, in rerum natura,] As man, woman, childe, ſubject born, or Alien, perſons outlawed, or otherwiſe attainted of treaſon, felony, or præmunire, Chriſtian, Jew, Heathen, Turk, or other Infidell, being under the Kings peace.

[a] A maſter of a ſhip and divers Mariners, &c. were attainted of murder before Juſtices in Eire, for drowning of many Jewes within the County of Kent.

[b] If a woman be quick with childe, and by a Potion or otherwiſe killeth it in her wombe; or if a man beat her, whereby the child dieth in her body, and ſhe is delivered of a dead childe, this is a great miſpriſion, and no murder: but if the childe be borne alive, and dieth of the Potion, battery or other cauſe, this is murder: for in law it is accounted a reaſonable creature, in rerum natura, when it is born alive. And the [c] Book in 1 E. 3. was never holden for law. And 3 Aſſ. p. 2. is but a repetition of that caſe. And ſo horrible an offence ſhould not go unpuniſhed. And ſo was the law holden [d] in Bractons time, Si aliquis qui mulierem prægnantem percuſſerit, vel ei venenum dederit, per quod fecerit abortivum, ſi puerperium jam formatum fuerit; & maximè ſi fuerit animatum, facit homicidium. And herewith agreeth Fleta: and herein the law is grounded upon the law

[a] Chro. de Dunſtable, Holl. 252. Coram Juſtic. Itiner. in Com. Kanc. 18 E. 1. See the ſecond part of the Inſt. cap. ſtat. de Judaiſmo.
[b] 22 E. 3 Coron. 263.
8 E. 2. Cor. 418. Stan. p. Cor. 21. c.
[c] 1 E. 3. 23, 24.
3 Aſſ. p. 2.
[d] Bract. li. 3. f. 31. Fleta, lib. ca. 23.

law of God, which ſaith, Quicunque effuderit humanum ſanguinem, fundetur ſanguis illius, ad imaginem quippe Dei creatus eſt homo. If a man counſell a woman to kill the child within her wombe, when it ſhall be born, and after ſhe is delivered of the child, ſhe killeth it; the counſellor is an acceſſory to the murder, and yet at the time of the commandement, or counſell, no murder could be committed of the childe in utero matris: the reaſon of which caſe proveth well the other caſe. Geneſis, c. 6. v. 6. Dier. 3 Eliz. fol. 186.

¶ Malice prepenſed.] Firſt let us ſee what this malice is.

Malice prepenſed is, when one compaſſeth to kill, wound, or beat another, & doth it ſedato animo. This is ſaid in law to be malice forethought, prepenſed, malitia præcogitata. This malice is ſo odious in law, as though it be intended againſt one, it ſhall be extended towards another. * Si quis unum percuſſerit, cum alium percutere vellet, in felonia tenetur. Dier. 3 Mar. 132. Pl. Com. 474. 475. 476. Lib. 9. fol. 81. Agnes Gores caſe. * Bract. lib. 3. fol. 155.

Mandata recipiunt ſtrictam interpretationem, ſed illicita latam & extenſivam. But herein there is a diverſity between the principall and the acceſſory. For if A command B to kill C, and B by miſtaking killeth D in ſtead of C, this is murder in B becauſe he did the act: and it ſprang out of the root of malice, and the law ſhall couple the event to the cauſe: but A is not acceſſory, becauſe his commandement was not purſued; and his conſent, which muſt make him acceſſory, cannot be drawne to it, for he never commanded the death of D. But where death enſueth upon that act which is commanded, though death it ſelfe be not commanded, there he is acceſſory to it, for there the commandement is the cauſe of death. As if A command B to beat C, and he beat him, whereof he dieth: the commander is acceſſory, and therefore the diverſity is apparent, as to the acceſſory. Where death is purſuant, and followeth upon the act commanded, there the conſent of the commander may well be drawn to it, for that the commandement is the mean of the death. But where death enſueth upon another diſtinct cauſe, there the conſent of the acceſſory cannot be drawn to it, & ſic de cæteris.

Another diverſity there is, when the commandement extends expreſly to the killing of another, and for the better accompliſhment thereof preſcribeth a mean; that is, to kill him by poyſon, and he killeth him with a Gun, he is acceſſory: for the commandement was to kill, which enſued, though the meane was not followed; & finis rei attendendus eſt. And the ſubſtance of the commandement, viz, [to kill] is purſued: and the ſame offence that was commanded, is committed. But otherwiſe it is, if the ſame offence which is commanded be not committed. As if one command one to rob the Vintners man of Plate, as he is come to a Gentlemans chamber to his ſupper with wine; and he breaketh the Taverne in the night, and ſtealeth the plate there; the commander is not acceſſory to this Burglary, for this is another offence then he commanded, and the conſent of the acceſſory muſt be drawne to the murder or felony committed.

2. It muſt be malice continuing untill the mortall wound, or the like be given, Albeit there had been malice betweene two, and after they are pacified and made friends, and after this upon a new occaſion fall out, and the one killeth the other; this is Homicide, but no murder, becauſe the former malice continued not.

If A command B to kill C, and before the act be done, A repenteth and countermand his comandement, and charge B not to doe it: if B after killeth him, A is not acceſſory to it: for the malicious mind of the acceſſory ought to continue to doe ill untill the act done.

If two fall out upon a ſudden occaſion, and agree to fight in ſuch a field, and each of them go and fetch their weapon, and go into the field, and therein fight, the one killeth the other: here is no malice prepenſed, for the fetching of the weapon and going into the field, is but a continuance of the ſudden falling out, and the blood was never cooled. But if they appoint to fight the next day, that is malice prepenſed. Pl. Com. ubi ſup.

¶ Malice implied, is in three caſes.] Firſt, in reſpect of the manner

Lib. 9. fo. 67. b. in Mackallies caſe. 1 E. 6. c. 12.

ner of the deed. As if one killeth another without any provocation of the part of him that is ſlain, the law implieth malice: whereof you may read lib. 9. fol. 67. Mackallyes caſe. Alſo the poyſoning of any man, whereof he dieth within the year, implieth malice, and is adjudged willfull murder of malice prepenſed. One may be poyſoned Four manner of ways: Guſtu, by taſte, that is, by eating, or drinking, being infuſed into his meat or drink: Anhelitu, by taking in of breath, as by a poyſonous perfume in a chamber, or other room: 3. Contactu, by touching: and laſtly, Suppoſtu, as by a glyſter or the like. Now for the better finding out of this horrible offence, there be divers kindes of poyſons, as the powder of Diamonds, the powder of Spiders, Lapis cauſticus, (the chief ingredient whereof is Soap) Cantharides, Mercury ſublimate, Arſenick, Roſeacre, &c.

Lib. 9. fo. 68.

2. In reſpect of the perſon ſlain. As if a Magiſtrate or known officer, or any other, that hath lawfull warrant, and in doing or offering to doe his office, or to execute his warrant, is ſlain, this is murder, by malice implied by law, as the Sherif, Juſtice of Peace, Underſherif, chief Conſtable, petit Conſtable, or any other miniſter of the King. If a man kill a watchman doing his office, it is murder: ſo it is, if any, that come in aid of the Kings officer, &c. to doe his office, be ſlain, it is murder.

Mackallies caſe. ubi ſupra. Lib. 4. fo. 40. b. 41. a. Youngs caſe. Mackallies caſe. ubi ſupra.

3. In reſpect of the perſon killing. If A. aſſault B. to rob him, and in reſiſting A. killeth B. this is murder by malice implied, albeit he never ſaw or knew him before. If a priſoner by the dures of the Gaoler commeth to untimely death, this is murder in the Gaoler, and the law implieth malice in reſpect of the cruelty. And this is the cauſe, that if any man dieth in priſon, the Coroner ought to ſit upon his body, to the end it may be inquired of, whether he came to his death by the dures of the Gaoler, or otherwiſe: all which appeareth in Britton: and this ſitting of the Coroner continueth till this day.

Brit. cap. 11. De priſons fo. 18. a. See the Mirror cap. 2. §. 11. De Homicide. 5 H. 6. 58. 27 Aſſ. 41.

If the Sherif, or other officer, where he ought to hang the party attainted, according to his judgement and his charge, will againſt the law, of his own wrong, burn or behead him, or è converſo; the law in this caſe implieth malice in him. Neither can the King by any warrant under the great Seal alter the execution, otherwiſe then the judgement of law doth direct: for it is a Maxime in law, Non alio modo puniatur quis quam ſecundum quod ſe habeat condemnatio.

Bract. l. 3. fo. 104.

And it is to be known, that in caſe of treaſon & felony, there is an expreſſe judgment, and an implied judgement: Expreſſe, when upon appearance, &c. an expreſſe judgement is given againſt him, quod ſuſpendatur per collum. Implied, when the offender makes default, and is outlawed, where the judgement is, Ideo utlagetur; or in caſe of abjuration, quia abjuravit regnum: and yet the like execution ſhall be in caſe of outlawry or Abjuration, as in caſe of an expreſſe judgement: and ſo it was adjudged in caſe of a perſon outlawed for felony, he ought to be hanged untill he be dead, and cannot be beheaded, * and the like is in caſe of abjuration. But in caſe of High treaſon, becauſe beheading is parcell of the judgement, the King may pardon all the reſidue of the execution except that: for ſeeing the King may pardon the whole execution, he may pardon any part, or all, ſaving part. If a Lieutenant, or other that hath commiſſion of Marſhall authority, in time of peace hang, or otherwiſe execute any man by colour of Marſhall law, this is murder, for this is againſt Magna Charta, cap. 29. and is done by ſuch power and ſtrength, as the party cannot defend himſelf; and here the law implieth malice. Vide paſch. 14 E. 3. in Scaccario the Abbot of Ramſeys caſe in a writ of Error in part abridged by Fitzh. tit. Scire fac. 122. for time of peace.

See hereafter in the title of Sanctuary for Abjuration. Paſch. 20 R. 2. Coram Rege. Linc. Ro. 58. * Mich. 1 R. 2. Coram Rege Rot. 1. Bedf. See hereafter cap. Judgement and Execution. a Paſch. 39 E. 3. Coram Rege. Rot. 92. Wiltes. Simile Paſch. 28 E. 3. Coram Rege Rot. 27. In caſe de Mortimer, who was put to death Anno 1 E. 3. Vide Rot. Brevium Anno 1 E. 3. part. 1.

a Thom. Countee de Lancaſter being taken in an open inſurrection, was by judgement of Marſhall law put to death, in Anno 14 E. 4. This was adjudged to be unlawfull, eo quod non fuit arrainiatus, ſeu ad reſponſionem poſitus tempore pacis, eo quod Cancellaria & aliæ Curiæ Regis fuerunt tunc apertæ, in quibus lex fiebat unicuique, prout fieri conſuevit, quod contra cartam de libertatibus cum dictus Thomas fuit unus Parium & Magnatum Regni non impriſonetur, &c.

Nec

Nec dictus Rex ſuper eum ibit, nec ſuper eum mittet, niſi per legale judicium Parium ſuorum, &c. tamen tempore pacis abſque arraniamento, ſeu reſponſione, ſeu legali judicio Parium ſuorum, &c, adjudicatus eſt morti.

¶ Within a year and a day.] How this year and day ſhall be accounted, is to be ſeen. If the ſtroke, or poyſon, &c. be given the firſt day of January, the year ſhall end the laſt day of December: for though the ſtroke, or poyſon, &c. were given in the afternoone of the firſt day of January, yet that ſhall be accounted a whole day, for regularly the law maketh no fraction of a day; and the day was added, that there might be a whole year at the leaſt after the ſtroke, or poyſon, &c. for if he die after that time, it cannot be diſcerned, as the law preſumes, whether he died of the ſtroke or poyſon, &c. or of a naturall death; and in caſe of life the rule of law ought to be certain. But ſeeing the year and day in the caſe of murder and homicide, muſt be accounted apres le fait, after the deed, if a man be ſtricken or poyſoned, &c. the firſt of January, and he dieth of that ſtroke or poyſon the firſt day of May, whether ſhall the year and day be accounted after the ſtroke or poyſon given, or after the death? and it ſhall be accounted after the death, for then the man was murdered, and not after the ſtroke or poyſon given, &c. both in the Indictment at the ſuit of the King, and in the Appeal at the ſuit of the party. And ſo it hath been often adjudged contrary to the opinion of Juſtice Stanford. A murderer half a year after the murder is received, and aided by another, this Acceſſory may be indicted or appealed within the year after he became acceſſory, though it be after the year, that the murder was committed, and ſhall be tryed when the Principall is attainted.

See the Statute of Glouceſt. 6 E.1.ca.9. 3 H.7.ca.1. 3 E.3.Cor.303. Lib.5.fo.1.in Cleytons caſe.

Lib.4.fo.41,42. in Heydons caſe.

Stanf.Pl.Cor.63. 26 Aſſ.p.52.

If a murder be committed in the day time in a town not incloſed, and the murderer not apprehended, the Townſhip ſhall be amerced; but if incloſed, whether the murder be in the night, or day, the town ſhall be amerced. They that are preſent when any man is ſlain, and doe not their beſt indeavour to apprehend the murderer or manſlayer, ſhal be fined and impriſoned. What judgment a felon attainted ſhall have, and what he ſhall forfeit; See the the firſt part of the Inſtitutes, Sect.747. and here cap. Judgement and Execution.

3 H.7.c.1.ſtat.1. 3 E.3.Cor.299. 8 E.2.Cor.395. Inter leges regis Edw.cap.6. Æthelſtanl. cap.1. Edi cap.6.&c.

* Nota that before the reign of H.1. the judgement for felony was not always one, but King H.1. ordained by Parliament, that the judgement for all manner of felonies ſhould be, that the perſon attainted ſhould be hanged by the neck till he be dead, which continueth to this day. See more for Murder in the chapter of Monomachia.

* 9 H.1. Hovenden Anno 1108. Simon Dun. Rad.& Floren. Wigorn. Hollengſh.45.

CAP. VIII.

Of Homicide.

HOmicidium ex vi termini comprehendeth Petit treaſon, Murder, and that which is commonly called Manſlaughter: for Homicidium eſt Hominis cædium, and homicidium eſt hominis occiſio ab homine facta. Therefore the right diviſion of Homicide is: That of homicides, or manſlaughters, ſome be voluntary, & of malice forethought; as Petit treaſon, and murder of another, and murder of himſelf. Of the two former we have ſpoken; and of murder of himſelf we ſhall ſpeak hereafter. Of manſlaughters, ſome be voluntary, and not of malice forethought: of theſe ſome be felony (as ſhall be ſhewed hereafter) and ſome be no felony; Of which, ſome be in reſpect of giving back inevitably in defence of himſelf, upon an aſſault of revenge: and ſome without any giving back; as upon the aſſault of a thief or robber upon a man in his houſe, or abroad. Some upon the aſſault of one, that is under cuſtody: as the Sheriff, or Gaoler aſſaulted by his priſoner: Some in reſpect that he is an officer or miniſter of juſtice, without any aſſault in execution of his office, or lawfull warrant. And Laſtly, ſome Homicides, that be no felony, be neither forethought, nor voluntary; as manſlaughter by miſadventure, per infortunium, or caſu. And ſome of theſe, that be no felony, are cauſes of forfeiture of a mans goods, and ſome be not: and of theſe ſeverall branches in their order. And firſt of murder of a mans ſelf, who commonly is called Felo de ſe.

3 E.3.Cor.290. 289.312. Britton cap.7.

Felo de ſe.

Felo de ſe is a man, or woman, which being Compos mentis, of found memory, and of the age of diſcretion, killeth himſelf, which being lawfully found by the oath of twelve men, all the goods and chattels of the party ſo offending are forfeited.

Regula.

Now let us peruſe the ſeverall branches of this deſcription, Majus eſt delictum ſeipſum occidere, quam alium.

¶ Being compos mentis.] [a] If a man loſe his memory by the rage of ſickneſſe or infirmity, or otherwiſe, & kill himſelf while he is not compos mentis, he is not Felo de ſe: for, as he cannot commit murder upon another, ſo in that caſe he cannot commit murder upon himſelf. [b] If one during the time that he is non compos mentis giveth himſelf a mortall wound, whereof he, when he hath recovered his memory, dieth, he is not Felo de ſe: becauſe, the ſtroke which was the cauſe of his death, was given when he was not compos mentis: Et actus non facit reum, niſi mens ſit rea. If a man give himſelf a wound, intending to be Felo de ſe, and dieth not within the year and day after the wound, he is not Felo de ſe.

[a] Rot.Clauſ. 1 E.1.m.7. Rot.Clauſ. 6 E.1.Alma filia Roberti de Keſton. 3 E.3. Cor.324. Rot.Eſcheat. Anno 47 E.3. nu.17.Ricus Algare.
[b] 8 E.2.Cor.412. 22 E.3. Cor. 244. Fl.Com.260.

¶ Of the age of diſcretion.] Hereof we have ſpoken before treating of murder.

¶ Kill himſelf.] [c] And this is often voluntary, and ſometime not voluntary. If A. give B. ſuch a ſtroke, as he felleth him to the ground, B. draweth his knife, and holds it up for his own defence: A. in haſt meaning to fall upon B. to kill him, falleth upon the knife of B. whereby he is wounded to death, he is Felo de ſe: for B. did nothing but that which was lawfull in his own defence.

[c] 44 E.3.44. 3 E.3.Cor.286. & 297.

¶ Lawfully found.] [d] No goods be forfeited, untill it be lawfully found by the oath of twelve men, that he is Felo de ſe: and this doth belong to the

[d] Pl.Com. 360.b.

Coroner

Coroner ſuper viſum corporis, to inquire thereof: and if it be found before the Coroner ſuper viſum corporis, that he was felo de ſe, [a] the Executors or Adminiſtrators of the dead ſhall have no traverſe thereunto. And this is the reaſon, that no man can preſcribe to have felons goods, becauſe they are not forfeited, untill it be found of Record, that he is Felo de ſe.

[a] Stanf.pl.cor. 183.d.

[b] If a man be Felo de ſe, and is caſt into the ſea, or otherwiſe ſo ſecretly hidden, as the Coroner cannot have the view of the body, and by conſequence cannot inquire thereof: In this caſe it may be inquired thereof by the Juſtices of peace of that County; for they have power by their commiſſion to inquire of all felonies. But if it be found before them, the Executors or Adminiſtrators of the dead may have a traverſe thereunto, but not to the indictment taken before the Coroner ſuper viſum corporis, as before is ſaid: and ſo hath it been reſolved. And ſo in the caſe aboveſaid may the Kings Bench enquire thereof, if the felony be committed in the County where the Kings Bench ſit, and the executors or adminiſtrators of the dead may traverſe the ſame.

[b] Hil.37. Eliz. in the Kings Bench by the whole Court, in the caſe of one Laughton of Cheſhire. See 8 E.2.cor. 412. 3 E.3.cor.312. ſilē. Stanf.pl.cor.184.

¶ Are forfeited.] Albeit [c] Bracton was of opinion; that if a man that was reus alicujus criminis captus ſit pro eodem, utpote pro morte hominis, vel cum furtomanifeſto, vel quod utlegatus ſit, & metu pœnæ imminentis mortis mortem ſibi conſciverit, hæredem non habebit, quia ſic convincitur felonia prius facta, viz. furtum, mors hominis, vel hujuſmodi, & conſcientiæ metus in reo pro confeſſo habetur. Aliud erit ſi non ſit in crimine deprehenſus, &c. non debet in aliquo caſu exhæredatio fieri, niſi præcedat crimen, propter quod periculum mortis vel membrorum ſuſtineri debet, &c. But the law makes no ſuch diverſity: [d] for Felo de ſe, whatſoever offence he hath committed (whereof he was not in his life time attainted) ſhall forfeit no lands, but his goods and chattels only. [e] And ſo ſaith Britton, En caſe ou home eſt felon de ſoy meſme, ſoient ſes chateux judges nous come chateux de felon, le heritage nequident remaine as heires. For no man can forfeit his land without an attainder by courſe of law.

[c] 8 E.2.cor.416. 44 E.3.44. 22 E.3.cor.259. 3 E.3.cor.301. 3 E.3.3.cor. 362. 5 Mar. Dier. 160. 9 Eliz. Dier.262. Bract.lib.3 f.150. Hetta lib.2.c.34. [d] Pl.com.261.a. & b.per.touts les Juſtices. [e] Britton,cap.7. Cuſtū de Norm. cap.21.

A [f] Villain giveth himſelf a mortall wound, the Lord ſeiſeth his goods, the Villain after dieth of the wound within the year and the day, the goods are forfeit. [f] Pl.com.260.b.

And herein [g] there is a diverſity betweene Chattels perſonels in action, and in poſſeſſion: for if a debt be owing to two, unleſſe it be in caſe of two joynt Merchants, and the one is Felo de ſe, he doth forfeit the whole: but otherwiſe it is of goods in poſſeſſion, for there he forfeiteth but his part. [g] 8 E.4. Pl.com.259.b.

A Leaſe [h] is made for years to the husband and wife, the husband drowneth himſelf, the Leaſe is forfeited, as you may reade at large in Plowdens Commentaries. [h] Pl.com.260. Dier 2 Mar.108.

Now let us purſue the branches into which bloody Homicide did ſpend and empty it ſelf.

¶ Some manſlaughters be voluntary, and not of malice forethought, upon ſome ſudden falling out. Delinquens per iram provocatus puniri debet mitius. And this for diſtinction ſake is called Manſlaughter. There is no difference betweene murder, & manſlaughter, but that the one is upon malice forethought, and the other upon a ſudden occaſion: and therefore is called Chance medley. As if two meet together, and ſtriving for the wall the one kill the other, this is manſlaughter and felony. And ſo it is, if they had upon that ſudden occaſion gone into the fields and fought, and the one had killed the other: this (as hath been ſaid) had been but manſlaughter, and no murder; becauſe all that followed, was but a continuance of the firſt ſudden occaſion, and the heat of the blood kindled by ire was never cooled, till the blow was given, & ſic de ſimilibus.

Manſlaughter [i] is felony, and hereof there may be acceſſories after the fact done: but of murder, there may be acceſſories, as wellbefore, as after the fact. [i] Lib.4.fol.44. Bibithes caſe.

¶ Some be [k] voluntary, and yet being done upon an inevitable cauſe, are no felony. As if A be aſſaulted by B, and they fight together, and before any mortall blow given A giveth back, untill he commeth unto a hedge, wall, or other ſtrait, [k] 15 E.3.Cor. 116. 15 Aſſ.p.7. 43 Aſſ.31. See the ſtat. of Gloc. cap.9. 3 E.3.cor.184. 286. & 297.305. & 361. See hereafter ca.101. of Judgement and execution. Verb. Of death of a man ſe defendendo.

beyond which he cannot paſſe, and then in his owne defence, and for ſafeguard of his owne life killeth the other: this is voluntary, and yet no felony, and the Jury that finde it, was done ſe defendendo, ought to finde the ſpeciall matter. [a] And yet ſuch a precious regard the law hath of the life of man, though the cauſe was inevitable, [b] that at the common law he ſhould have ſuffered death: and though the ſtatute of Glocester ſave his life, yet he ſhall forfeit all his goods and chattels. [c] Hereof there can be no acceſſories, either before or after the fact, becauſe it is not done felleo animo, but upon inevitable neceſſity ſe defendendo. If A aſſault B ſo fiercely and violently, and in ſuch a place, and in ſuch manner, as if B ſhould give back, he ſhould be in danger of his life, he may in this caſe defend himſelfe; and if in that defence he killeth A, it is ſe defendendo, becauſe it is not done felleo animo: for the rule is, when he doth it in his owne defence, upon any inevitable cauſe, Quod quis ob tutelam corporis ſui fecerit, jure id feciſſe videtur.

¶ Some without any giving back to a wall, &c. or other inevitable cauſe. [d] As if a theefe offer to rob or murder B either abroad, or in his houſe, and thereupon aſſault him, and B defend himſelf without any giving back, and in his defence killeth the thief, this is no felony; for a man ſhall never give way to a thief, &c. neither ſhall he forfeit any thing. [e] And ſo it is declared by the ſtatute of 24 H. 8. Likewiſe [f] if a priſoner aſſault the Gaoler, the Gaoler is not by law inforced to give back: but if in defence of himſelfe he kill the priſoner, this is no felony.

[g] So if any officer, or Miniſter of juſtice, that hath lawfull warrant, and the party aſſault the Officer or Miniſter of Juſtice, he is not bound by law to give back, but to carry him away: and if in execution of his office he cannot otherwiſe avoid it, but in ſtriving kill him, it is no felony. And in that caſe the Officer or Miniſter of juſtice ſhall forfeit nothing, but the party ſo aſſaulting or offering to flye away, and is killed, ſhall forfeit his goods and chattels.

[h] Vicecomes ſeu balivus Domini Regis, qui interficit duos latrones non permittentes ſe juſticiari in ſui defenſionem, & non ex felonia, ſeu malitia, acquietatur.

[i] If at a Juſt or Turnement, or at the play with Sword and Buckler by the Kings commandement, one doth kill another, this is no felony. [k] In the reigne of King H. 2. it was enacted, that if in ſuch caſe one was ſlaine, it ſhould be no felony, for that in friendly manner they contended to try their ſtrength, and to be able to doe the King ſervice in that kinde, as occaſion ſhould be offered.

¶ There is an Homicide, that is neither forethought, nor voluntary. [l] As if a man kill another per infortunium, ſeu caſu, that is Homicide by miſadventure. De amputatore arborum, qui cum ramum projiceret, inſcius occidit tranſeuntem: aut cum quis pilam percuſſerit, &c. ex cujus ictu occiſus eſt, tales de homicidio non tenentur. Homicide by miſadventure, is when a man doth an act, that is not unlawfull, which without any evill intent tendeth to a mans death.

¶ Unlawfull.] [m] If the act be unlawfull, it is murder. As if A meaning to ſteale a Deer in the Park of B. ſhooteth at the Deer, and by the glance of the arrow killeth a boy, that is hidden in a buſh: this is murder, for that the act was unlawfull, although A had no intent to hurt the boy, nor knew not of him. But if B the owner of the Park had ſhot at his own Deer, and without any ill intent had killed the Boy by the glance of his arrow, this had been Homicide by miſadventure, and no felony.

[n] So if one ſhoot at any wild fowle upon a tree, and the arrow killeth any reaſonable creature afar off, without any evill intent in him, this is per infortunium: for it was not unlawfull to ſhoot at the wilde fowle: but if he had ſhot at a Cock or Hen, or any tame fowle of another mans, and the arrow by miſchance had killed a man, this had been murder, for the act was unlawfull.

¶ Without

[a] 43 Aſſ. 21. Roc. Parl. 3 R. 2. nu. 18. Iohn Imperials caſe.
[b] 21 E. 3. 17. Gloc. cap. 9. 4 H. 7. 2.
[c] Lib. 4. fo. 44. Bibiths caſe.

Bracton. [d] Lib. 5. fo. 91. Semayns caſe. 26 Aſſ. p. 23. 32. 29 Aſſ. p. 23. 3 E. 3. cor. 305. & 330. 22 E. 3. cor. 261. 21 H. 7. 39.
[e] 24 H. 8. cap. 5.
[f] 22 Aſſ. p. 55.
[g] 3 E. 3. cor. 90. 22 E. 3. cor. 21. M. 22. E. 3. coram rege Rot. 181. Eborum, Rot. libert. Anno 1 & 2 E. 2. m. 2.
[h] Paſch. 16. E. 3. Coram rege. Rot. 131. Norff.

[i] 11 H. 7. 22. Vid. hereafter. cap. Againſt riding and going armed.
[k] Mirror cap. 1. § 13. Des adventurers.
[l] Bract. lib. 3. fo. 136. b. See the ſtat. of Gloc. ca. 9. Marl. cap. 25. Bract. lib. 3. 120. Brit. ca. 7. fo. 15. Fleta lib. 1. ca. 30. Mir. ca. 1. § 9.
[m] Bract. lib. 3. 120. b. Sed erit diſtinguendum utrum quis dederit optatam rei licitæ vel illicitæ, &c.
[n] 3 E. 3. cor. 354. 2 H. 4. 18. 21 H. 7. 28.

¶ Without any evill intent.] If a man knowing that many people come in the ſtreet from a Sermon, throw a ſtone over a wall, intending only to feare them, or to give them a light hurt, and thereupon one is killed, this is murder; for he had an ill intent, though that intent extended not to death, and though he knew not the party ſlaine. For the killing of any by misadventure, or by chance, albeit it be not felony, Quia voluntas in delictis, non exitus ſpectatur; yet he ſhall forfeit therefore all his goods and chattels, to the intent that men ſhould be warie ſo to direct their actions, as they tend not to the effuſion of mans blood. Marlbr. ca. 25.

Nec veniam effuſo ſanguine caſus habet.

Note, Homicide is called Chancemedley, or Chancemelle, for that it is done by chance (without premeditation) upon a ſudden brawle, ſhuffling, or contention: for meddle or melle (as ſome ſay) is an antient French word, and ſignifieth brawle, or contention. But I take it that the French word is meſle, which ſignifying ſhuffling, or contending, and by corruption we changing the S to D, doe call it medle, the S being not pronounced, whereof we have made medletum. So as killing of a man by chance-medle, is killing of a man upon a ſudden brawle or contention by chance. For the word [medle or melle] whereof we have made a Latin word medletum or melletum, ſee Glanvill, lib. 1. cap. 2. Cognoſcere de medletis, de verberibus, de plagis: that is, of brawling, or brabling, of battery, of wounding: the firſt in words, the other two in ſtrokes, &c. in ancient time expreſſed by theſe two Saxon words, viz. Flit, a Flitan, to brawle; & Fiht, which we retaine ſtill to fight when it proceeds to blowes. Unde Flitwit, Flichwite, Fightwite, &c. De Medletis.

And thus much of Homicide committed by man. See in the next Chapter of Deodands, of another kinde of killing of a man.

CAP. IX.

Of Deodands.

DEodands when any [a] moveable thing inanimate, or [b] beaſt animate, doe move to, or cauſe the untimely death of any reaſonable creature by miſchance [c] in any County of the Realm (and not upon the ſea, or upon any ſalt water) without the will, offence, or fault of himſelf, or of any perſon. [d] They being ſo found by lawfull inquiſition of twelve men, being precium ſanguinis, the price of blood, are forfeited to God, that is to the King, Gods Lieutenant on earth, to be diſtributed in workes of charity for the appeaſing of Gods wrath.

And it is to be obſerved, that there is a diverſity, as concerning the Deodand, when the party ſlaine is within the age of diſcretion, viz. of 14. years, and when he is above the age of diſcretion. For when he is ſlaine by fall from a cart, horſe, mill, &c. and is within the age of diſcretion, there is no Deodand, as it is adjudged [e] in 8 E. 2. tit. Coron. 389. But otherwiſe it is, if an ox, horſe, bull, or the like doe kill any within the age of diſcretion, there the ſame are Deodands.

And this law concerning Deodands, is grounded upon the law of God, Exodus 21. verſ. 28. Si bos cornu percuſſerit virum, aut mulierem, & mortui fuerint, lapidibus obruetur. See Juſtice Stanford lib. 1, cap. 12. which need not here to be recited. If A. killeth a man with the ſword of B. the ſword ſhall be forfeit to

[a] 8 E. 2. Cor. 403. 8 E. 2. bid. 189. A mill wheel. Fleta lib. 1. ca. 25. quicquid mobile ſit in molendino. Mirror c. 1. §. 13. 12 R. 2. Cor. 20. a maſſe of earth in a mine.

[b] Bract. lib. 3. fo. 120. b. à bove, cane, &c.

[c] Bracton lib. 3. fo 122 a. Britton fo. 6. 15. Mirror cap. 1. §. 3. Fleta li. 1. ca. 25. 45 E. 3. 2. b. Vide 4 E. 1. Stat. officium coron. 6 E. 6. Dier 77. b. 61. 2. Quæ movent ad mortem ſunt Deo danda. 2 Mar. ibid. 107. b. Kelway 21 H. 7. fo. 8.

[d] Lib. 5. fo. 110. Foxleys caſe accord. And this is the reaſon they cannot be claimed by preſcription. 45 E. 3. ubi ſupra. Fleta ubi ſup.

[e] 8 E. 2. Cor. 389.

[f] Exod. 21. 28.

the

Doct. & Stud. lib. 2. c. 56. b. Br. Forfeit. 112.

the King as a Deodand, because movet ad mortem; and for default of safe keeping of the same by the owner.

All our ancient Authors ubi supra

But now that we have cited, and referred you to our bookes of law already known, and published: let us cast our eye upon some Records of Parliament concerning Deodands, of, or out of ships or other vessels upon Rivers, or waters, fresh or salt, the law being clear, that in aqua dulci there may be Deodands, but in the sea, or in aqua salsa, being any arm of the sea, though it be in the body of the County, there can be no Deodand of the ship, or any part thereof, though any be drowned out of it; because, though the arm of the sea be within the body of the County, the ship or other vessell is subject to such dangers upon the raging waves in respect of the wind and tempest. And this diversity doth notably appear in the Parliament Roll. Amongst the petitions in Parliament it is desired, that if it happen any man, or boy to be drowned by a fall out of any ship, boat, or vessell, they shall be no Deodands. Whereunto the King upon great advice, and conference with his Judges and Councell learned (as always the King doth to petitions in Parliament) made answer, The ship, boat, or vessell being upon * the sea shall be adjudged no Deodand, but being upon a fresh river, it is a Deodand, but the King will shew favour.

Rot. Parl. 51 E. 3. nu. 73.

* The arm of the sea is included herein.

See the like petitions in other Rolls of Parliament, Anno 1 R. 2. nu. 106. 4 R. 2. nu. 33. 1 H. 5. nu. 35. &c. but never obtained more, then the Common law gave in these cases.

CAP. X.

Of Buggery, or Sodomy.

25 H. 8. ca. 6. 5 Eliz. ca. 17. 1 Mar. ubi sup.

IF any person shall commit buggery with mankind, or beast; by authority of Parliament this offence is adjudged felony without benefit of Clergy. But it is to be known, (that I may observe it once for all) that the statute of 25 H. 8. was repealed by the statute of 1 Mar. whereby all offences made felony or Premunire by an Act of Parliament made since 1 H. 8. were generally repealed, but 25 H. 8. is revived by 5 Eliz.

Horrendum illud peccatum. 5 El. ca. 17.

Buggery is a detestable, and abominable sin, amongst Christians not to be named, committed by carnall knowledge against the ordinance of the Creator, and order of nature, by mankind with mankind, or with brute beast, or by womankind with brute beast.

Rot. Parl. 50 E. 3. nu. 58.

Bugeria is an Italian word, and signifies so much, as is before described, Paderastes or Paidereستes is a Greek word, Amator puerorum, which is but a Species of Buggery, and it was complained of in Parliament, that the Lumbards had brought into the Realm the shamefull sin of Sodomy, that is not to be named, as there it is said. Our ancient Authors doe conclude, that it deserveth death, ultimum supplicium, though they differ in the manner of the punishment. Britton saith, that Sodomites, and Miscreants shall be burnt: and so were the Sodomites by Almighty God. Fleta saith, Pecorantes & Sodomitæ in terra vivi confodiantur: and therewith agreeth the Mirror, par le grand abhomination, and in another place, he saith, Sodomie est crime de Majestie, vers le Roy celestre. But (to say it once for all) the judgement in all cases of felony is, that the person attainted be hanged by the neck, untill he, or she be dead. But in antient times in that case, the man was hanged, & the woman was drowned, whereof we have seen examples in the reign of R. 1. And this is the meaning of ancient Franchises granted de Furca, & Fossa, of the Gallows, and the Pit, for the hanging upon the one, and drowning in the other; but Fossa is taken away, and Furca remains.

Britton ca. 9. Gen. 19. 9. Rom. ca. 1. 17. F. N. B. 269. a. Fleta li. 1. ca. 35. Mirror ca. 4. §. de Majesty ca. 1. §. 15, & cap. 2. Sect. 11.

Cum

Cùm maſculo non commiſcearis coitu fœmineo, quia abominatio eſt. Cum omni pecore non coibis, nec maculaberis cum eo: Mulier non ſuccumbet jumento, nec miſcebitur ei, quia ſcelus eſt, &c. Levit. 18. 22, 23. 1 Tim. 1. 10.

The Act of 25 H. 8. hath adjudged it felony, and therefore the judgement for felony doth now belong to this offence, viz. to be hanged by the neck till he be dead. He that readeth the Preamble of this Act, ſhall finde how neceſſary the reading of our ancient Authors is: The ſtatute doth take away the benefit of Clergy from the Delinquent. But now let us peruſe the words of the ſaid deſcription of Buggery.

¶ Deteſtable and abominable.] Theſe juſt attributes are found in the Act of 25 H. 8.

¶ Amongſt Chriſtians not to be named.] Theſe words are in the uſuall Indictment of this offence, and are in effect in the Parliament Roll of 50 E. 3. Ubi ſupra. nu. 58.

¶ By carnall knowledeg, &c.] The words of the Indictment be, Contra ordinationem Creatoris, & naturæ ordinem, rem habuit veneream, dictumque puerum carnaliter * cognovit, &c. So as there muſt be penetratio, that is, res in re, either with mankind, or with beaſt, but the leaſt penetration maketh it carnall knowledge. [a] See the indictment of Stafford, which was drawn by great adviſe, for committing buggery with a boy; for which he was attainted, and hanged.

[b] The Sodomites came to this abomination by four means, viz. by pride, exceſſe of diet, idleneſſe, and contempt of the poor. Otioſus nihil cogitat, niſi de ventre & venere. Both the agent and conſentient are felons: and this is conſonant to the law of God. [c] Qui dormierit cum maſculo coitu fœmineo, uterque operatus eſt nefas, & morte moriatur. And this accordeth with the ancient Rule of law, Agentes & conſentientes pari pœna plectentur.

Emiſſio ſeminis maketh it not Buggery, but is an evidence in caſe of buggery of penetration: and ſo in Rape the words be alſo carnaliter cognovit, and therefore there muſt be penetration; and emiſſio ſeminis without penetration maketh no Rape. Vide in the Chapter of Rape. If the party buggered be within the age of diſcretion, it is no felony in him, but in the agent only. When any offence is felony either by the Common law, or by ſtatute, all Acceſſories both before and after, are incidently included. [d] So if any be preſent, abetting and aiding any to do the act, though the offence be perſonall, and to be done by one only, as to commit rape, not only he that doth the act is a principall, [e] but alſo they that be preſent, abetting, and aiding the miſdoer, are principalls alſo, which is a proof of the other caſe of Sodomy.

* This is grounded upon the Word of God. viz. Gen. 19. 4, 5. Judges 19. 22. Ut cognoſcamus eos.

a Coke lib. Intr. 352. Mich. 5. Ja. Coram rege.

b Ezek. 16. 49. Gen. 18. 29. Deut. 29. 23. Eſay 13. 19. Jer. 23. 14. 49. 18. 50. 4. Luke 17. 28, 29. 2 Pet. 2. 6. Jud. verſ. 7. Rom. 1. 26, 27. Sapient. 10. 6, 7.

c Levit. 20. 13. 1 Cor. c. 6. v. 10.

d 3 & 4 P. & Mar. Juſtice Daliſons Reports. Stanf. Pl. Cor. Pl. com 97.

e 11 H. 4. 13. See the 2. part of the Inſtitutes in the expoſition upon the ſtatute of W. 1. ca. 13. and W. 2. ca. 34.

¶ Or by woman.] This is within the Purview of this Act of 25 H. 8. For the words be, if any perſon, &c. which extend as well to a woman, as to a man, and therefore if ſhe commit buggery with a beaſt, ſhe is a perſon that commits buggery with a beaſt, to which end this word [perſon] was uſed. And the rather, for that ſomewhat before the making of this Act, a great Lady had committed buggery with a Baboon, and conceived by it, &c.

There be four ſins in holy Scripture called Clamantia peccata, crying ſins, whereof this deteſtable ſin is one, expreſſed in this Diſtichon.

Sunt vox clamorum, vox ſanguinis, & Sodomorum,
Vox oppreſſorum, mercès detenta laborum.

CAP.

CAP. XI.

Of Rape.

Deut.22.25. Inter leges Alveredi cap.25. Canuti 49.50. See W.2.c.34. W.1.ca.13. Rot.Parl.8.E.2. & Rot.Clauſ. 8 E.2.m.3. Quia in caſu quando aliquis, &c. 6 R.2.ca.6. 18 Eliz.cap.6. Lib.11.fo.39. Alexander Poulters caſe. See the 1.part of the Inſtitutes. Sect.190. Mich.19 E.3. Coram rege Rot.159. London quod ipſam de puellagio ſuo felonicè & totaliter defloravit. 7 H.6. 22 E.4.22. 6 H.7.4.b.

RApe is felony by the Common law, declared by Parliament for the unlawfull and carnall knowledge and abuſe of any woman above the age of ten years againſt her will, or of a woman child under the age of ten years with her will, or againſt her will, and the offender ſhall not have the benefit of Clergy.

What offence this was at the Common law, and what Acts of Parliament have been enacted concerning the ſame; See in the Second part of the Inſtitutes in the expoſition upon the ſtatute of W.1.ca.13. and W. 2. ca. 34. and the Firſt part of the Inſtitutes, Sect.190. 7 H.6.2. 22 E.4.22. 6 H.7.4.b.

[a] The doubt that was made in 14 Eliz. at what age a woman child might be raviſhed, was the cauſe of the making of the [b] Act of 18 Eliz.ca.6. for plain declaration of the law. [That if any perſon ſhould unlawfully know and abuſe any woman child under the age of ten years, every ſuch unlawfull and carnall knowledge ſhould be felony, and the offender therein being duly convicted, ſhall ſuffer as a felon without allowance of Clergy.]

[c] Although there be emiſſio ſeminis, yet if there be no penetration, that is res in re, it is no rape, for the words of the Indictment be, carnaliter cognovit, &c.

[d] In the Parliament Rolls we read what deteſtation hath been had of this hainous offence. At the petition of Iſabell late the wife of John Botiler of Beauſie in the County of Lancaſter Knight, which Iſabell one William Pull of Witrall in the County of Cheſter Gent. ſhamefully did raviſh. It is enacted by Authority of Parliament, that if William Pull doe not yeeld himſelf after proclamation made againſt him, that he ſhall be taken as a Traitor attainted.

[e] The ſame Iſabell by another petition ſhewed, how the ſaid William by dures & menace of impriſonment inforced her to marry him, and by colour thereof raviſhed her, for the which ſhe prayeth her Appeal, which to her is granted.

[f] Margaret late the wife of Sir Thomas Maleſaut Knight, made the like complaint againſt one Lewis Leyſon, alias Gethey a Welchman. Againſt whom the like order is taken, as was for the ſaid Iſabell: onely where the Rape was committed in Wales, it is enacted, that the ſame ſhall be tried in Somerſetſhire.

[g] Upon complaint of Henry Beamont ſon and heir of Sir Henry Beamont Knight, and Charles Vowell Eſquire, &c. againſt one Edward Lancaſter of Skipton in Craven Eſquire, for taking away Dame Joan Beamont the late wife of the ſaid Sir Henry, being lawfully married to the ſaid Charles, and for that the ſaid Edward married the ſaid Dame Joan againſt her will, and raviſhed her. Againſt Edward Lancaſter and others, remedy is given by appeal, and further [h] upon occaſions happening thereupon, the ſtatute of 31 H.6. was made, which giveth remedy to a woman enforced to be bound by ſtatute or obligation, as by the Act it appeareth.

a Di.14 El. f.304. b 18 El.ca.6. c See before in the next preceding chapter of Buggery. d Rot.Parl. 15 H.6.nu.14. e In the ſame Roll nu.15. f Rot.Parl. 18 H.6.nu.28. g Rot.Parl. 31 H.6.nu.72. h 31 H.6.ca.9.

It is read in ſtory, that chaſt Lucretia being raviſhed, ſhe was found in extream heavineſſe, and it was demanded of her, Salvan? ſhe anſwered, Quomodo mulier ſalva eſſe poteſt læſa pudicitia? And yet thereof it is truly ſaid, duo fuerunt, & unus commiſit adulterium.

Gen.34. 2 Sam.13.14.19.

In the holy Hiſtory you ſhall read, Dinam cum vidiſſet Sichem filius Hemor Hevei princeps terræ illius, adamavit & rapuit, &c. Obſerve well what followed thereupon. Likewiſe Ammon prævalens viribus ſuis oppreſſit Thamar ſororem ſuam, & cubavit cum ea, &c. quæ aſpergens cinerem capiti ſuo, ſciſſa talari tunica, impoſitis manibus ſuper caput ſuum ibat ingrediens & clamans, &c. And obſerve alſo the end of the offender.

CAP. XII.

Felony for carrying away a woman againſt her will, &c.

WE have thought good next after Buggery and Rape, to ſpeake of the ſtealing of women, becauſe the * Apoſtle doth rank, after the Sodomite, him that is Plagiarius, ſo called, becauſe lege Flavia plagis damnaretur. And we will begin with the ſtatute of 3 H. 7. cap. 2. Exod. 21. 16. Deut. 24. 7. * 1 Tim. 1. 10.

Where women, as well maidens, as widows and wives, having ſubſtances, ſome in goods moveable, and ſome in lands and tenements, and ſome being heirs apparant unto their Anceſtors, for the lucre of ſuch ſubſtances, been oftentimes taken by miſdoers, contrary to their will, and after maried to ſuch miſdoers, or to other by their aſſent, or defoyled, to the great diſpleaſure of God, and contrary to the Kings Laws, and diſparagement of the ſaid women, and utter heavineſſe, and diſcomfort of their friends, and to the evill enſample of all other: It is therefore ordained, eſtabliſhed, and enacted by our Soveraign Lord the King, by the advice of the Lords Spirituall and Temporall, and the Commons in the ſaid Parliament aſſembled, and by authority of the ſame: That what perſon or perſons from henceforth that taketh any woman ſo againſt her will unlawfully, that is to ſay, maid, widow, or wife, that ſuch taking, procuring, and abetting to the ſame, and alſo receiving wittingly the ſame woman ſo taken againſt her will, and knowing the ſame, be felony. And that ſuch miſdoers, takers, and procurators to the ſame, and receytors, knowing the ſaid offence in forme aforeſaid, be henceforth reputed and judged as principall felons. Provided alway that this Act extend not to any perſon taking any woman, onely claiming her as his Ward, or bondwoman. 3 H. 7. ca. 2. 39 El. ca. 9.

This Act on the offenders part doth extend to all degrees, and to all perſons, but extendeth not to all women: For on the womans part Four things are neceſſarily required to make the offence felony. Firſt, that the maid, wife, or widow have lands or tenements, or moveable goods, or be an heire apparant. Secondly, that ſhe bee taken away againſt her will. Thirdly, that ſhe be married to the miſdoer, or to ſome other by his conſent, or bee defiled (that is, carnally knowen.) For if theſe concurre not, the miſdoer is no felon within this ſtatute, but otherwiſe to be puniſhed. And ſo it was reſolved, 3 & 4 Ph. & Mar. And after reſolved by all the Judges of England upon adviſed conſideration of this Act of 3 H. 7. and upon conſultation, and conference between them, as the Lord Dier hath reported under his owne hand, which I have ſeene, but the report thereof is omitted in the print, and the Indictments grounded upon this ſtatute, are according to this reſolution. Fourthly, that ſhe be not ward, or bondwoman to the perſon that taketh her: or cauſeth her to be taken onely as his ward or bondwoman. 3 & 4 Ph. & Mar. Juſtice Daliſons report. Mich. 16 Eliz. Dier Manuſcript. And ſo reſolved by Parliament in Anno 39 El. cap. 9.

By this Act, not onely the takers, but the procurers, abetters of the felony, and receivers of the ſaid woman wittingly, knowing the ſame, be all adjudged as principall felons: the like whereof we find not in any other ſtatute, that we remember. But by a conſtruction of the Common law, they that receive the miſ- Nota, quia raro.

doers, and not the woman, are accessories; for this Act maketh the receivers of the woman, &c. principals.

39 Eliz. cap. 2. Kelway 81. b. Stanf. Pl. cor. 37. b. 4 & 5 Ph. & Mar. cap. 8. Hil. 34 Eliz. lib. 3 fo. 37. Ratcliffes case.

For the odiousnesse of this offence, the benefit of Clergy is taken away from all the offenders against the said Act, Vid. Kelway, & Stanford.

See a good and profitable statute made for such as take away Maidens, or women children, &c. within the age of sixteen yeers (though it be not against their will) without consent of parents, &c. and a penalty imposed for deflowring, or contracting matrimony with such maids or women children; and further, the forfeiture which such maid or woman child undergoe, which consent to such contract, &c. But because we are now to speake of felonies, whereunto that Act extends not, we refer the Reader to the statute it selfe. Onely we will adde a case which we find in the Parliament Roll.

Rot. Parl. 2 R. 2. nu. 34.

The Lady Nevill of Esser complained in Parliament, that John Brewse and others brake her house at London, and violently tooke thereout Margery the Daughter of John Nierford her sonne (by her first husband) and carryed the said Margery away to the house of Sir Robert Howard Knight; and they kept away the said Margery, to the end she should not pursue in Court Christian, for the annullation of a contract of matrimony, against the said John Brewse. This was holden so great an offence, as the said Sir Robert was committed by the Lords to the Tower of London, and he after found surety, and promised to doe his uttermost to bring forth the said Margery by a day prefixed, or else to yeeld himselfe prisoner to the Tower againe: but it seemes the maid was restored to her mother againe, &c. for I find no further prosecution of that cause. See hereafter, cap. 45. in fine 43 Eliz. cap. 13.

CAP. XIII.

Of Felony for cutting out of Tongues, and putting out of Eyes, &c.

5 H. 4. ca. 5.

IF any man doe cut out the tongue, or put out the eyes of any of the Kings Lieges, of malice prepensed, it is felony. The mischiefe before this statute was, that when one had beene beaten, wounded, maimed or robbed, &c. the misdoers, to the end that the party grieved might not be able to accuse them, did cut out their tongues, or put out their eyes, pretending the same to be no felony: and therefore it is ordained and established to be felony by this Act.

Here it is to be observed, that where it doth appear by the preamble of this law, that this offence had been before this Act dayly done: this law did so terrifie offenders, as we remember not that we have read in any book or Record, any to be indicted, &c. upon this law, above one at the most. And of all statutes these are to be preferred, which prevent offences before they be done, before those which punish them after they be done. And therefore in the making of this law there was Salutaris severitas, & beata securitas.

¶ Malice prepensed.] that is, voluntary and of set purpose, though it be done upon a sudden occasion: for if it be voluntary, the law implyeth malice.

Bract. lib. 3. fo. 144. b.

We read in Bracton, that the cutting off of a mans privy members was felony by the common law: for he saith, Quid dicitur si quis alterius virilia absciderit, & illum libidinis causa vel convitii castraverit? tenetur sive hoc volens fecerit vel invitus, & sequitur pœna aliquando capitalis, aliquando perpetuum exilium cum omni bonorum ademptione. And agreeable thereunto I find a Record in Bractons time to this effect; Henricus Hall & A. uxor ejus capti & detenti sunt in prisona de Evilchester, eò quòd rectati fuerunt quòd ipsi absciderunt

Rot. Claus. Anno 13 H. 3. m. 9.

virilia

virilia Johannis Monachi, quem idem Henricus deprehendit cum prædicta A. uxore ejus, &c. Fleta ſaith, Si quis caſtratus fuerit, talis pro mahemiato poterit adjudicari. And therewith agreeth old Juſtice Sennall in the Mirror; and ſo is the law holden at this day. And in the Appeale and indictment of Mayhem it is ſaid Felonicè Mayhemavit; whereof we ſhall ſpeake more hereafter in his proper place. Cutting off of eares is no felony, as it appeareth by the ſtatute of 37. H. 8. Vid. Stanf. Pl. Cor. 27. a. The offender ſhall have the benefit of his Clergy.

Fleta lib. 1. ca. 38. Mir. ca. 1. §. 9. De homicidio. See hereafter ca. 23. of Mayhem 37 H. 8. cap. 6. Mir. cap. 4. de Artic. de Eire.

CAP. XIV.

Of Burglary.

A Burglar (or the perſon that committeth Burglary) is by the [a] Common law a felon, that in the night breaketh and entreth into a manſion houſe of another, of intent to kill ſome reaſonable creature, or to commit ſome other felony within the ſame, whether his felonious intent be executed or not. We call it in Latin Burglaria: and in Statuto de officio Coronat. the offenders are called Raptores domorum.

[a] Inter leg. Edm. cap. 6. fo. 76. 22 Deut. 2.

This word [b] Burglar, is derived of theſe two words, viz. Burgh, ſignifying an houſe, and Laron ſignifying a thief, as it were an houſe-thiefe. [c] The Saxons called it hurbrec, inter ſcelera inexpiabilia. And aptly was it derived from Latro: for,

[b] Lib. 4. fo. 39. Brooks caſe.
[c] Inter leges Canuti fo. 118. cap. 61. Lamb.

[d] Ut jugulent homines, ſurgunt de nocte latrones.

[d] Horace lib. 1. Epiſt.

[e] Britton calleth him a Burgeſſor. Then let us peruſe the branches of this deſcription.

[e] Britton fo. 17.

¶ In the night.] [f] The word in the Indictment or Appeale, is, noctanter, id eſt, noctu. The naturall day is divided in lucem, light, which is dies ſolaris, and in tenebras, which is night. [g] And therefore as long as the day light continues, whereby a mans countenance may be diſcerned, it is called day: and when darkneſſe comes and day light is paſt, ſo as by the light of day you cannot diſcerne the countenance of a man, then it is called night. [h] Poſui tenebras & facta eſt nox, in qua pertranſeunt beſtiæ ſilvæ; ſol oritur & congregatæ ſunt, exit homo ad opus & operationem ſuam, & redit veſpere. This doth aggravate the offence, ſith the night is the time wherein man is to reſt, and wherein Beaſts run about ſeeking their prey.

[f] 4 E. 6. Br. Cor. 185. Stanf. Pl. Cor. fo. 30.
[g] 3 E. 3. cor. 293.
[h] Pſal. 104. Lib. 7. fo. 6. b. Milborns caſe.

In ancient Records Crepuſculum was ſignified, when it was ſaid, Inter Canem & Lupum: for when the night begins, the Dog ſleepes, and the Wolf ſeeks his prey. For ſo we find the entry oftentimes in the reigne of E. 1. as taking one example for many. [i] Margeria filia Nicolai de Okele appellat Johannem Choſe prò Raptu, & pace regis fracta, die Martis, &c. inter Canem & Lupum, id eſt, inter diem & noctem, vel in crepuſculo, anglice Twylight.

[i] Tr. 7 E. 1. coram rege, Rot. 12 Gloc.

[k] In placito de domo combuſta malitioſe hora veſpertina, ſcilicet inter Canem & Lupum, venerunt malefactores, A. B. &c.

[k] Placita coronæ apud novum caſtrum anno 24 E. 1. Rot. 6. in dorſo.

[l] Ignitegium, à tegendo ignem, i. *Cover le fue*, hora octava poſt meridiem.

[l] Hil. 3 R. 2. coram rege Rot. 8. London. John Imperials caſe.

[m] Bracton ſaith, Si quis furem nocturnum occiderit, ita demum impune foret, ſi parcere ei ſine periculo ſuo non potuit; ſi autem potuit, aliter erit, in manibus enim regis ſunt vita & mors hominum, ſicut coram Rege apud Windeſore de quodam homine de Gocham, coram Gulielmo de Ralegh tunc Juſticiario, cui dominus Rex in tali caſu perdonavit mortem. Agreeable hereunto was the law of the twelve tables, Si noctu furtum factum ſit, jure cæſus eſt.

[m] Bract. lib. 3. fo. 144. b. Pardon.

1 Mar. Dier 99.

¶ Break and enter] The words of the indictment be, Fregit & intravit: and this is understood of an actuall breaking of the house, and not of a breaking in law: for every entry into the house by a trespasser, is a breaking in law; but in case of a Burglary, every entry is not a breaking of the house, for the words of the indictment be, Felonice & burglariter fregit, &c. As if the doore of a mansion house stand open, and the theefe enter into the house with a purpose to steale, this is a breaking of the house in law, and yet no Burglary, because there must be an actuall breaking. So it is if the window of the house be open, and a thief with a Hook or other engine draweth out some of the goods of the owner: this is no Burglary, because there is no actuall breaking of the house. But if the theefe breaketh the glasse of the window, and with a Hook or other engine draweth out some of the goods of the owner, this is Burglary, for there was an actuall breaking of the house. It is deemed an Entry, when the theefe breaketh the house, and his body, or any part thereof, as his foot, or his arme, is within any part of the house: or when he putteth a Gun into a window which he hath broken, or into an hole of the house which he hath made, of intent to murder or kill; or as hath been said, a Hook or other engine into any part of the house which he hath broken, of intent to steale: this being put by him into the house, is an Entry and breaking of the house. But if he doth barely break the house without any such entry at all, that is no Burglary, for it must be fregit & intravit.

Stanf. Pl. Cor. 30. a. Dier 1 Mar. 99. a. 22 Ass. p. 39. 95. * 13 H. 4. 13.

* If divers come in the night to doe a Burglary, and one of them break & enter, the rest of them standing neere to the doore, or about other parts of the house, or at a Lanes end, or some Orchard gate, or Field gate, or the like, to watch that no help shall come to defend & aide the owner & dweller; this is Burglary in all.

That which is done in fraudem legis, the law giveth no benefit thereof to the party. As if Theeves come in the night with Hue & Cry, pretending that they be robbed, and shall require the Constable to search for the felons, and whilest he goeth with them into some mans house, they binde and rob the Constable, and dweller, this is Burglary; for in judgment of law it is their act.

¶ Into a Mansion-house.] The Indictment saith, Domus mansionalis, a mansion or dwelling house.

a 2 E. 6. Br. Cor. 180. Britton fo. 17. b Lib. 4. fo. 0. in Brooks case. Hil. 38 Eliz. per les Justices, ibid. c 23 H. 8. cap. 1. 5 E. 6. cap. 9. See *Inter leges Alveredi* c. 6. d Britton fo. 17. Dier, 1 Mar. 99. 21 E. 3. tit. cor. 264. 22 Ass. p. 95. 26 Ass. 19. e 27 Ass. 42. 20 E. 2. Cor. 283. 22 E. 3 Cor. 120. Rot. Claus. 3 E. 3. m. 2, & 18. the Ordinary may allow clergy for Sacrilege. Lib. 11. fo. 29. f Matth. 21. 23. g 5 E. 6. cap. 9.

a Domus mansionalis is divided into two branches, viz. to Inset Edifices, as Hall, Parler, Buttry, Kitching, and lodging-chambers, &c. and the Outlet buildings, as Barnes, Stables, Cow-houses, Dairies, &c. all these are parcels of the mansion-house, and will passe by the name of Domus mansionalis. And albeit every Mansion-house hath not all these buildings, yet every house for the dwelling and habitation of man is taken to be a Mansion-house, wherein Burglary may be committed.

b If a man hath a Mansion-house, and upon some accident he and all his family some part of the night are out of the house, and in the meane time a thief break & enter into the house, of intent to steale; this is Burglary, although neither the owner nor any of his family is in the house: for the Indictment of Burglary is, Domum mansionalem, &c. fregit, &c. and this is Domus mansionalis. See hereafter the statutes of 23 H. 8. and 5 E. 6.

d If a man doe break and enter a Church in the night, of intent to steale, &c. this is Burglary, for Ecclesia est domus mansionalis omnipotentis Dei. e Frustra legis auxilium invocat, qui in legem committit. f Domus mea domus orationis vocabitur, vos autem fecistis illam speluncam latronum. Sacrilegium derivatur à sacro & legere, id est, furari.

A Tent or Booth in Fair or Market, is not Domus mansionalis, but of another name or kind; g but that is provided for by the statute of 5 E. 6. cap. 9. whether the Robbery be done in the night, or in the day, the owner, &c. being within the same, sleeping or waking. But a shop wherein any person doth converse being parcell of a Mansion-house, or not parcell, is taken for a Mansion-house.

Likewise

Likewiſe a Chamber or roome, be it upper or lower, wherein any perſon doth inhabit or dwell, is Domus manſionalis in law.

Our ancient Authors and old Records did expreſſe Burglary under this word, Hamſuckne, or Hamſokne. The firſt is derived from two Saxon words, viz. of Ham that ſignifieth a Manſion-houſe, Domus manſionalis, which to this day we call our home: and Suckne or Succen, that is, Secken, as much to ſay, as to ſeek a man in his houſe to ſlay or rob him.

It is to be noted that our ancient Authors, nor our old Book caſes doe diſtinguiſh between the day and the night, when the offence ſhould be committed in the houſe, ſave onely the Mirror.

Si quis Hamſockne, quæ dicitur invaſio domus contra pacem Domini Regis, in domo ſua ſe defenderit, & invaſor occiſus eſt, impreſecutus & inultus remanebit, ſi ille quem invaſit aliter ſe defendere non potuit: dicitur enim quòd non eſt dignus habere pacem, qui non vult obſervare eam. And the Mirror ſaith, Hamſokne de auncient ordinance eſt peche mortel, car droit eſt que cheſcun eyt quiet en ſon hoſtel, q̃ a la ley eſt. Bracton lib. 3. fo. 144. b. Britton fo. 33. Statut. Wal. fo. 6. ter. de Snodon. Mirr. cap. 1. § 11. de Hamſockne. Expoſit. vocab. inter ſtatuta. Fleta lib. 1. ca. 42. 13 H. 4. fol. 7. tit. Cor. 29.

Others derive Hamſokne from Ham, which of both ſides is confeſſed to be a Manſion-houſe, and Sockne which ſignifies a Court, as much to ſay, as to have juriſdiction, or to hold plea of offences done to a man in his houſe.

One was indicted, Quòd clauſum I. S. fregit, &c. ad ipſum interficiendum. This is not felony without an act done, though it were noctanter: for the Appeale and indictment of Burglary is, Quòd domum manſionalem, &c. fregit & intravit. So as neither cloſe nor any other place, but the Manſion-houſe onely is required to make burglary. But burglary may be committed as well in the outſet buildings, as in the inſet, for all are parts of the Manſion-houſe, and he that breaketh any of the outſet buildings doth break Domum manſionalem, as well as he that breakes the inſet.

¶ Of intent to kill.] If a man be indicted, that he in the night time did felониouſly break the houſe of I. S. ad verberandum ipſum I. S. this is no burglary, becauſe it was but to beat, and not to kill. But if it were ad interficiendum I. S. then it is burglary, though he never touched him; for the intent muſt be to commit felony, and not treſpaſſe, or other thing that is not felony, the words of the Appeale or Indictment being, Quod felonice & burglariter fregit, & intravit, &c. ſo as there muſt be a felониous and burglarious intent. 13 H. 4. ubi ſup.

¶ Or to commit ſome other felony.] They be Burglers which break any houſe or Church in the night, although they take away nothing: otherwiſe it is of Robbery, as ſhall be ſaid hereafter: See Stanf. Pl. Cor. 30. b. 22 E. 3. cor. 264. 22 Aſſ. 39. & 95.

The ſtatutes of 23. H. 8. cap. 1. and 5 E. 6. cap. 9. doe not define what burglary is, but take away the benefit of Clergy from certaine kinds of Burglary. As when an actuall robbery is done, and when the owner or dweller, &c. is put in feare, &c. or when the owner or dweller &c. is ſleeping or waking within any place within the precinct of the ſame houſe; theſe circumſtances do aggravate the Burglary: and therefore the makers of thoſe ſtatutes tooke away the benefit of Clergy not in all caſes of burglary, but in thoſe particular caſes where a robbery is done, &c. But the ſtatute of 18 Eliz. cap. 6. hath taken away the benefit of Clergy in all caſes of Burglary: and hereby a good and equall proportion is kept in all caſes of this nature. And both acts of Parliament, and the reſolution of Judges doe well agree together, which ſome not well obſerving have publiſhed manifeſt errors, which being in caſe of life are fit to be reformed. 23 H. 8. cap. 1. 5 E. 6. ca. 9. Clergy. 18 Eliz. cap. 6.

If any man ſhall break a houſe by day, and take away thence money or goods to the value of five ſhillings or more, in any part of a dwelling houſe, or outhouſe belonging to the ſame, though no perſon be therein, for this felony he ſhall loſe the benefit of his Clergy, ſo as for this offence the party ſhall ſuffer death, as in caſe of Burglary. 39 Eliz. ca. 15.

CAP.

CAP. XV.

Of burning of houſes.

De incendiariis inter leges Æthelſtani cap. 6. fo. 61. Et Canuti cap. 61. fo. 118. *Huberner* numeratur inter ſcelera inexpiabilia. *b* Cap. itineris. Bract. l. 3. 146. b.

HAving now ſpoken of Burglaries, and felonies concerning houſes, there reſteth one other of that kind, wherewith we will conclude this diviſion, and that is, Burners of houſes: which being a felony by the Common law, let us ſee what our ancient Authors, and old Parliaments, and Records have left unto us thereof.

[a] The ancient article of the Eire was, De incendiariis nocturnis vel diurnis, & combuſtionibus tempore pacis nequiter perpetratis.

[b] Hereof Bracton ſaith. Si quis turbata ſeditione incendium fecerit nequiter & in felonia, vel ob inimicitiam, vel alia de cauſa, capitali ſententia punietur. Nequiter dico, quia incendia fortuita, vel per negligentiam facta, & non mala conſcientia, non ſic puniuntur, quia civiliter agitur contra tales.

Britton fo. 16.

Britton ſaith, Soit inquiſe de ceux que felonioufment en temps de peace aient auters blees, ou auters meaſons arſes, & ceux que ſerr' de ceo attaint, ſoient arſes, iſſint que ils ſoient punies per meſme le choſe dont ilz pecherent.

Fleta l. 1. ca. 35. De combuſtionibus.

Fleta ſaith, Si quis ædes alienas nequiter ob inimicitiam, vel prædæ cauſa tempore pacis combuſſerit, & inde convictus fuerit per Apellum, vel ſine, capitali debet ſententia puniri.

Mirror ca. 1. §. 8. De Ardours cap. 2. §. 11. De Appeal darſon. & §. 12. cap. 3. §. Al arſon. * Ou biens. W. 1. ca. 15.

The Mirror, Ardours ſont, que ardent citie, ville, maiſon home, maiſon beaſt, ou auters catenx, de lour felonie en temps de pace pur hame ou vengeance, &c. In appeale De Arſon. Iſſint Ieo diſe, &c. Que Sebright illonque eſt defamy, &c. de ceo que a tiel jour, &c. en tiel meaſon, * ou biens, miſt le feu, &c. And afterwards en reſpons al arſon. Al arſon poit il dire, que laventure avient de miſchance, & nient de felony purpenſe.

So hainous was this offence, that in Anno 3 E. 1. it was declared by Parliament, Que ceux queux font priſes pur arſon felonioufment fait, ne ſoient en aſcun manner repleviſables. Adjudicantur ſuſpendi, qui ex malitia præcogitata combuſſerunt magnam partem de Lynne in Com. Norff.

Hil. 7 E. 2. coram rege Rot. 24. Norff. 8 H. 6. ca. 6. See 15 H. 6. nu. 23.

Upon diſperſing of bills, threatning burning of houſes, &c. was made high treaſon, whereof more hereafter: but that act is repealed by 1 E. 6. cap. 12. and 1 Mar. Now upon that which hath been ſaid, our purpoſe is to frame a deſcription of this felony, as may alſo be warranted by our Peer-books, and the common opinion and experience at this day.

¶ Burning is a felony at the Common law, committed by any that malicioufly and voluntarily, in the night or day, burneth the houſe of another.

Now let us peruſe this deſcription, by all his materiall parts.

All the ancient Authors. 3 H. 7. 10. 11 H. 7. 1. 23 H. 8. ca. 1. 25 H. 8. ca. 3. 5 & 6 E. 6. ca. 9. 4 & 5 Ph. & Mar. cap. 4. lib. 11. fo. 35. Alexander Poulters caſe. 3 H. 7. ubi ſupra.

¶ Burning] Putting of fire into any part of a houſe, whereby that part burneth. For it is neceſſary, that there be a burning, but it is not neceſſary that all or any part be wholly burnt, nor that the fire hath any continuance, but the intent onely ſufficeth not. As if one put fire into any part of a houſe, and it burneth not, this is no felony, for the words of the indictment be, Incendit & combuſſit. Again, if it doth burn, though it goeth out of it ſelfe, it is felony.

¶ By the common law.] This is proved by all the ancient Authors, Acts of Parliament, and books aforeſaid. and the reaſon thereof is, for that burning of houſes being an hoſtile action, is preſumed in law to be done malicioufly for revenge, and as an enemy, to conſume the ſame by fire in time of peace

peace. It was made in ſpeciall manner high treaſon (as before is ſaid) viz. if any threatned by caſting of bills, to burn an houſe, if money be not laid in a certain place, and after did burn the houſe: but this treaſon is repealed by 1 E. 6. ca. 12. and 1 Mar. but yet the felony remaineth ſtill: for In proditione (as hath been ſaid) implicatur felonia. 8 H. 6. ca. 6. 3 H. 7. 10. Per Brion. High Treaſon. Nota.

¶ Maliciouſly and voluntarily.] Proved alſo by the words of the Indictment, which be, Voluntariè ex malitia ſua præcogitata, & felonicè. For if it be done by miſchance, or negligence, it is no felony, as before it appeareth.

The law doth ſometime imply that the houſe was burnt maliciouſly, & voluntarily. As if one intend to burne the houſe of A. onely, and not the houſe of B. and yet in burning the houſe of A. the houſe of B. is burnt; in this caſe the burning of the houſe of B. is felony, becauſe it proceeded of the malitious and voluntary burning of the houſe of A. and the event ſhall be coupled to the cauſe, which was voluntary and malitious: and therefore in the Indictment for the burning of the houſe of B. it ſhall be ſaid, Voluntariè ex malitia ſua præcogitata, & felonicè, &c. Pl. Com. fo. 475.

¶ The houſe of another.] This is not onely intended of Inſet houſes, parcell of the manſion-houſe, but to the Outſet alſo, as barn, ſtable, coſn-houſe, Sheep-houſe, Dairy houſe, Pilhouſe, and the like, parcell of the manſion houſe: but burning of a Barn, being no parcell of a manſion houſe, is no felony: and yet if there be Corne or Hay within it, the burning thereof is felony, though the Barn be not part of a manſion-houſe. * But the offender is not ouſted of his Clergy, but where he burnes ſome part of a manſion-houſe, or a barn with Corne. Tr. 44. Eliz. Coram rege. Rot. 20. 229. Lib. Int. Coke fo. 29. b. Lib. 4. fo. 20. Barhams caſe. * Pl. Com. 475.

Note the ancient Authors extended this felony, further then houſes, viz. to ſtacks of Corne, Waynes or Carts of Coale, Wood or other goods. And it is ſaid in 3 H. 7. ubi ſupra, Certum eſt quòd crematio domorum felonicè fuit felonia per communem legem.

The attempt to burn a ſtack of Corne, was made felony by the ſtatute of 3 & 4 E. 6. but this is repealed by 1 Mariæ. 3 & 4 E. 6. ca. 5.

Burning of the frame of a houſe, was made felony by the ſtatute of 37 H. 8. becauſe the frame of a houſe is no houſe: but that is repealed by 1 E. 6. ca. 12. & 1 Mariæ. 37 H. 8. ca. 6.

43 El. ca. 13. It is felony if any within the Counties of Cumberland, Northumberland, Weſtmerland, or the B. of Dureſme wilfully, and of malice burn or cauſe to be burnt any barn or ſtack of corn or grain, without benefit of Clergy. 43 El. ca. 13.

Note a diverſity between the Indictment of Burglary and burning; for the Indictment of burglary muſt ſay, (as hath been ſaid) domum manſionalem, but ſo need not the Indictment of burning, but domum, viz. a barn, &c. ſalt-houſe, or the like. Bract. lib. 3. fo. 146. b.

CAP.

CAP. XVI.

Of Robbery.

See the 1. part of the inſtitutes. Sect. 501. Cuſtum. de Norm. cap. 71.

Robbery is a felony by the Common law, committed by a violent aſſault, upon the perſon of another, by putting him in feare, and taking from his perſon his money or other goods of any value whatſoever. [a] See Inter leges Canuti, apertæ compilationes numerantur inter ſcelera hominum inexpiabilia.

a Int. leges Canu. cap. 61. fo. 118. Lamb.

¶ Robbery.] [b] It is derived de la Robe, both becauſe in ancient times (as ſometime yet is done) they bereave the true man of ſome of his robes or garments, and alſo for that his money or other goods are taken from his perſon, that is, from or out of ſome part of his garment, or robe about his perſon. And is ranked in this place, for that it concerneth not onely the goods, but the perſon of the owner. We call it, Roberia & rapina, and the theefe Raptor. Whereof Bracton ſaith, Eſt enim quaſi furtum rapinæ, quæ idem eſt, quantum ad nos, quod roberia, & eſt genus contrectationis contra voluntatem Domini, & ſimilis pœna ſequitur utrunque delictum, unde prædo dicitur fur improbus: quis enim magis contrectat rem alienam invito domino, quam ille qui rapit?

b Bracton li. 3. fo. 146.

Bracton lib. 3. fo. 150. b. Britton fo. 22. Fleta lib. 1. ca. 37. Mirror cap. 1. §. 10.

¶ Felony by the Common law.] This is agreed of, of all, both ancient and late, without any queſtion. And it is deemed in law to be amongſt the moſt hainous felonies, Crimen improbiſſimum.

Britton & Fleta Ubi ſupra. 14 E. 3. cor. 115.

¶ Violent Aſſault.] This agreeth with the Indictment, Violenter & felonicè cepit, &c.

Bract. li. 3. fo. 150. b.

¶ By putting him in feare.] This agreeth alſo with the Indictment: and this circumſtance maketh the difference between a Robber and a Cutpurſe: both take it from the perſon, but this takes it clam & ſecretè, without aſſault or putting in feare, and the Robber by violent aſſault, and putting in feare. If one cut a purſe, with money in it above twelve pence, he ſhall bee hanged, and the benefit of Clergy is taken from him. But of ancient time the puniſhment was otherwiſe. S. captus in London cum burſa quam ſcidit cum tribus ſolidis, & hoc non potuit dedicere, & ideo amittat dextrum pollicem. Britton ſaith, Des cinſors des burſes, voylons que celuy que la burſe coupa ſi autre mavieſe ne eyt feyt, eyt judgement de pillory; & ſilz eyent emble auter choſe meinder de 12 deniers, perdent un oraile, & ſi le choſe paſſe 12 deniers eyent judgment de mort.

10 H. 3. Cor. 434. Britton fo. 24. b.

¶ By taking.] The words of the Indictment be, Violenter & felonicè cepit. Hic opus eſt interprete. For it muſt be underſtood, that there is an actuall taking in deed, and a taking in law, and that may be, when a thiefe receiveth, &c. For example: If thieves rob a true man, and find but little about him, take it, this is an actuall taking; & by meanes of death, compell him to ſwear upon a book to fetch them a greater ſum, which he doth, and deliver it unto them, which they receive, this is a taking in law by them, and adjudged Robbery: for feare made him to take the oath, and the oath, and fear continuing, make him bring the money, which amounteth to a taking in law, and in this caſe there need no ſpecial Indictment, but the generall Indictment (quòd violenter & felonice cepit) is ſufficient. And ſo it is, if at the firſt, the true man for feare deliver his purſe, &c. to the thief.

44 E. 3. 14. 4 H. 4. 2.

This

This word [cepit] neceſſarily implieth, that the thief muſt be in poſſeſſion of the thing ſtoln: For example, If the bag or purſe of the true man be faſtned to his girdle, &c. and the thief the more eaſily to take the bag or purſe, doe cut the girdle, whereby the bag or purſe falleth to the ground, this is no taking, for the thief had never any poſſeſſion thereof, & ſic de ſimilibus: but if the thief had taken up the bag, or purſe, and in ſtriving had let it fall, and never took it again, this had been a taking, becauſe he had it in his poſſeſſion; for the continuance of his poſſeſſion is not required by law.

¶ From his perſon] The words of the Indictment be, à perſona, &c. If the true man ſeeking to eſcape, for the ſafeguard of his money, caſt it into a buſh, which the thief perceiving, takes it; This is a taking in Law from the perſon, becauſe it is done at one time. If the true man had caſt off his ſurcote, or other uppermoſt garment, and the ſame lying in his preſence, a thief aſſault him, &c. and take the ſurcote, this is robbery; for that which is taken in his preſence, is in law taken from his perſon: And ſo it is of the horſe of a true man, which ſtands by him, Et ſic de ſimilibus. 14 E.3. Cor.115.

In ancient Authors and Records, in Pleas of the Crown, you ſhall read of Sakebere, &c. whom we will derive and explain. Sakebere, Sacbere, or Sacburgh, Sac, or Sak is an ancient French word, and ſignifieth a bag, purſe or powch. So that Sackbere is he that did bear the bag, &c. and in legall underſtanding, is he that was robbed of his mony in his bag. And this agreeth with the interpretation thereof by Bracton, viz. Furtum verò manifeſtum eſt, ubi latro deprehenſus eſt ſeiſitus de aliquo latrocinio, viz. Handhabende, & Bacberende, & infectus fuerit per aliquem cujus res illa fuerit, qui dicitur Sacaburth. And herewith agreeth Fleta lib. 1. c.42. §. Sunt autem, &c. And Britton fo.22.b. & 72. b. agreeth herewith, and calleth him Sakebere; and ſo doth Juſtice Stanford, Pl.cor.fo.28. term him, which (as we take it) is his right name derived of theſe two words, Sac and bere, that is, he that did bear the bag, &c. Bract.lib.3.fol. 150.b. Fleta l.1.cap.42. Britton fo.22.b. & 72.b. Stanf.fo.28.

¶ Of what value ſoever.] Though it be under the value of twelve pence that is taken, (as to the value of a penny or two pence) it is robbery, but ſomewhat muſt be taken; for the aſſault only to rob without taking ſome money or goods is no felony, & ſuch opinions as ſeem to the contrary, were maintained by that, which then was anciently holden, Quòd voluntas reputabatur pro facto. See before cap. High Treaſon fo.5. Inſidiator viarum. 14 E.3. Cor.115. 22 Aſſ.p.39. 27 Aſſ.38. 24 E.3.42. 13 H.4.7. 9 E.4.28.

CAP. XVII.

In what caſes breakers of priſons are Felons.

WE have ſpoken ſufficiently hereof in his proper place, in the expoſition of the Statute of 1 E.2. de Frangentibus priſonam. Onely this is to be added, that in caſe of felony, the offender ſhall have the benefit of Clergy, for the breach of priſon. In the ſecond part of the Inſtitutes upon the Statute of 1 E.2. De frangentibus priſonam.

CAP. XVIII.

VVhere eſcape Voluntary is Felony.

WE have alſo ſpoken ſomewhat hereof in the expoſition of the ſaid Act of 1 E. 2. And the voluntary eſcape can be no felony in the Gaoler, unleſſe the Priſoner be under cuſtody by lawfull Warrant expreſſing the offence, which you may ſee there at large.

2. There muſt be a felony done at the time of the eſcape: for a relation which is but a fiction in law, ſhall never make a man a felon, as likewiſe there it appeareth. See Stanford lib. 1. cap. 26.

CAP. XIX.

Of Felony by ſtealing, carrying away, withdrawing or avoyding of Records, &c. 8 *H.6. cap.* 12.

8 H.6. cap. 12. *SI aſcun Record ou parcel dicel, Brief, Retorn, Pannell, Proces, ou Garrant D'attorney en les courts le Roy, de Chancery, Eſchequer, lun Banke, ou lauter, ou ſa Treaſorie, ſoit voluntarement emblee, emport, retreit, ou avoide per aſcun Clerke, ou auter perſon, a cauſe de quel aſcun Iudgement ſoit reverſe: Que tiel embleor, emporter, retraher, & avoider, lour procurators, concellors, & abettors ent endites, & ſur proces ſur ceo fait, ont duement convicts per lour proper confeſsion, ou per enqueſts prender des loiall homes, (dont la moitye ſoit des homes daſcun court de meſme les courts, & lauter moitye des auters) ſoient adjudges pur felons, & encorgent la paine de felony, & que les Iudges de les Courts de lun Banke, ou de lauter eyent power de oier & terminer tielz defaults devant eux, & ent fait punition, come devant eſt dit.*

IF any Record or parcell of the ſame, Writ, Retorne, Panell, Proceſſe or Warrant of Attorny in the Kings Courts of Chancery, Exchequer, the one Bench or the other, or in his Treaſury be willingly ſtoln, taken away, withdrawn, or avoided by any Clerk, or by other perſon, becauſe whereof any judgement ſhall be reverſed: That ſuch ſtealer, taker away, withdrawer, or avoyder, their procurators, counſellors, and abettors, thereof indicted, and by Proces thereupon made thereof duly convict by their own confeſſion, or by inqueſt to be taken of lawfull men, (whereof the one halt ſhall be of the men of any Court of the ſame Courts, and the other half of others), ſhall be judged for felons,

felons, and ſhall incur the pain of felony. And that the Judges of the ſaid Courts, of the one Bench or of the other, have power to hear and determine ſuch defaults before them, and thereof to make due puniſhment, as afore is ſaid.

The miſchief before this Statute was, That whereas Records are of ſuch high nature and credit, as they import in themſelves abſolute verity without contradiction; to the end, that there might be an end of contention and controverſie, and men might reſt in ſafety and repoſe, certain Clerks and other perſons did oftentimes imbeſell Records, or ſome parcell of them and ſometime a Writ, Retorn, Panell, Proces, or Warrant of Attorney, or raſe or blittate the ſame; by reaſon whereof divers judgements were avoided or reverſed, whereby no man (as the ſtatute ſaith) had any thing in ſurety. This was a great miſpriſion, for the which the offenders therein might be puniſhed, either at the ſuit of the King by indictment, or at the ſuit of the party by an Action upon his caſe. See the Record concerning this matter following. Placita coram Juſticiariis de Banco termino Trinitatis Anno 19 E. 1. Rot. 57. indorſ.

Radulphus de Greſhope communis Attornatus de com. Weſtmerland malitioſe Rotulum excurtavit & abſcidit, & ideo per annum & diem committitur Turri London, poſtea anno 20 E. 3. per mandatum Regis liberatur & per Juſticiarios ei eſt inhibitum ne de cætero in eadem Curia de aliquibus negotiis ſe intromittat.

Which remedy and puniſhment were thought too weak againſt Clerks and other perſons, which (committing ſuch things) commonly were of ſmall ability: therefore this Act, conſidering the danger of the offence, maketh the ſame felony, as by the letter thereof appeareth.

¶ Si aſcun * Record.] A Record is regularly a monument or Act judiciall before a Judge, or Judges, in a Court of Record, entred in [a] Parchment in the right Roll. It is called a Record, for that it recordeth or beareth witneſſe of the truth, and is derived of the Verb Recordor, whereof the Poet ſpeaketh,

---Si rite audita recordor.

It hath this ſoveraign priviledge, that it is proved by no other but by it ſelfe. Monumenta (quæ nos Recorda vocamus) ſunt vetuſtatis & veritatis veſtigia. And albeit the cauſe adjudged be particular, yet when it is entred of Record, it is of great authority in Law, and ſerves for perpetuall evidence and therefore ought to be common to all, yea, though it be againſt the King: as it is declared by Act of Parliament in Anno 46 E. 3. which you may reade in the Preface to the Third Book of my Reports.

* See the firſt part of the Inſtitutes Sect. 117. for this word.

[a] 9 E. 4. 3. b. 16 Eliz. Dier 330. a.

Virgil.

Rot. Parl 46 E. 3. 9 H. 7. 16. See the preface to the third Book.

¶ Briefe, Retorne, Panel, Proces, ou Garr D'attornie.] All theſe are ſufficiently known, and yet have we treated of the ſame in the First part of the *Inſtitutes*.

¶ En les courts le Roy.] Here are expreſſly named four of the Kings Courts, viz. the Chancery, the Exchequer, the Kings Bench, and the Court of Common Pleas, and hereunto is added the Kings Treaſury: ſo as this Act extendeth not to any other Court or place, then is here named.

¶ Chancerie.] This muſt be underſtood of the Court of Chancery, which proceedeth according to the courſe of the Common Law, as in caſe of priviledge, of Scire facias upon Recognizances, Traverſes of offices, and the like: for as to theſe it is a Court of Record, but as to the proceeding by Engliſh Bill in Courſe of equity, it is no Court of Record, for thereupon no Writ of Error lieth, as in the other caſes.

37 H. 6. 14.

¶ Ou ſa Treaſorie.] The Kings Treaſury is called Theſauraria Regis, the place where the Kings Treaſure is kept. This Treaſure is twofold, viz. his Money or Coin: and another, that is far more precious and excellent, and

Repiſter. F.N.B. 224. d. those be the sacred Judgements, Records, and other judiciall proceedings under the safe custody of the Treasurer, and Chamberlains of the Exchequer. And this Treasury is partly in the Exchequer, and partly in the Towre of London: for there be ancient Rols of the Treasury remaining in the Towre. And therefore this Act intending to include both the one, and the other, saith generally, en ſa Treaſorie.

¶ Soit voluntarement emblee, emport, retreit, ou avoide] In the Indictment upon this statute besides felonicè, this word [voluntariè] must of necessity be used, to agree with this Act. Here be four words used, emblee stolne, emport carried away, retreit withdrawne, ou avoide or avoided. So as the sense is, if any Record or part of it, Writ, Retorne, Panell, Proces, or Warrant of Attorny, &c. be stolne, carried away, withdrawn, or avoided, &c. And this word [avoided] is a large word, and doth include, razing, or clipping, or cutting of the side, or other part of the Roll, or any other kind of avoyding the same. 2 R. 3. 10.

¶ Per aſcun Clerk ou auter perſon.] This Act doth not extend to any Judge of the Court; both because it beginneth with a Clerk, &c. and for that by the statute of 8 R. 2. a penalty is inflicted upon a Judge, &c. for making any false Entry, razing any Roll, or changing any Verdict. See the Statute; for it extendeth also to Clerks. Only this is to be observed in that Statute, that where it is said, [the King and his Councell,] it is intended of the Court of Justice where the matter dependeth: for the Judges are the Kings Councell for judicature and proceedings according to Law and Justice. 2 R. 3. 10. 8 R. 2. cap. 4. 2 R. 3. 10. 2 R. 3. 10.

Justice Ingham paid in the reign of E. 1. Eight hundred Marks for a Fine, for that a poore man being fined in an action of debt at thirteen shillings foure pence, the said Justice moved with pity caused the Roll to be raſed, and made it six shillings eight pence.

This case Justice Southcot remembred, when Catlyn Chiefe Justice of the Kings Bench in the reigne of Queen Elizabeth, would have ordered a rasure of a Roll in the like case, which Southcot, one of the Judges of that Court, utterly denied to assent unto, and said openly, That he meant not to build a Clockhouse: for (said he) with the fine that Ingham paid for the like matter, the Clockhouse at Westminster was builded, and furnished with a Clock, which continueth to this day.

¶ A cauſe de quel aſcun judgement ſoit revers.] This Act extendeth only to Records, whereupon judgement is given. But whether judgement be given in causes criminall at the suit of the King upon an Indictment, or at the suit of the party in an Appeale, or in actions reall, personall, or mixt, or of the like nature, this Act extends thereunto, if judgement be afterwards given, and to Outlawries, for there judgement is given per judicium Coronatorum. For it is not materiall whether the act be done against this Statute, either before or after judgement, so judgement be given. 2 R. 3. 10.

¶ Revers] is here taken, not onely where the judgement is made erroneous, and to be reversed by Writ of Error, but where the judgement is so annihilated, and made voyd, as it bindeth not, or may be reversed or avoided by plea. See the Book in 2 R. 3. fol. 10. which expoundeth well this Statute.

¶ Que tiel embleor, emporter, &c. lour procurers, counſellors & abettors, &c.] This Act expresly extendeth to Accessories before, and leaveth accessories after to the construction of law, yet may there be accessories after the fact: for whensoever an offence is made a felony by Act of Parliament, there shall be accessories to it both before and after, as if it had been a felony by the Common Law, and therefore though this Act expresseth Vid. 3 & 4 Ph. & Mar. Justice Dalisons Report, ubi ſup.

accessories

accessories before, yet it taketh not away accessories after, but leaveth them to the Law, contrary to the opinion of Justice Stanford. See before the Exposition of 3 H. 7. for taking away of women against their will. Stanf. Pl. Cor. 44. b. 3 H. 7. cap. 2.

¶ Ent endites.] If the acts that make this felony, be committed in two Counties, the Indictment faileth, as hath been said before upon the statute of 2 & 3 E. 6. cap. 24. And this case of felony rising in two Counties, is not holpen by any Statute yet made. 2 R. 3. fo. 10.

¶ Dont la moity soit des homes dascun court.] Here is a party Jury, the one halfe to be of the Officers and Clerks of the Court &c. for their knowledge, and for the better information of the others.

¶ Et que les Judges des dits Courts de lun Bank ou de lauter eyent power de oier & terminer tiels defaults devant eux, & ent faire punition, come est avantdit.] This Clause is in nature of a Commission to the Justices of either Bench, if the offence be committed in the County where the Benches do sit. And the Justices of either Bench have a concurrent authority, and which of them enquire first shall proceed: but if the felony be committed in another County, then where the Benches sit (as for example, in Surry, Hertfordshire, &c.) there the Justices ought to have a Commission. But if the Bench sit in Middlesex, and the felony is done in London, in which case a Commission is requisite, as is aforesaid. But then some have said, that by the Charters of London confirmed by Parliament, the Major ought to be principall in the Commission, and the Major is none of the Judges authorized by this Act to heare and determine this felony, but the Justices of the one Bench or the other: and therefore the statute being penall, and to be taken strictly, no proceeding can be. Sed salva res est: For the Charters of the City of London extend only to such offences committed in London, whereof the Major with others by Commission may inquire of, heare, and determine, and not to such offences so annexed by authority of Parliament to other persons (as in this case to the Justices of the one Bench or the other) as the Major is not warranted by the said Act to inquire, &c. And therefore a Commission in this case may be made to the Justices of the one Bench or the other, omitting the Major, ne Curia Regis deficeret in justicia exhibenda. 2 R. 3. 10. 2 R. 3. 11.

And albeit this kinde of felony is an heinous offence, yet may the offenders therein have their Clergy: for untill the raign of H. 7. (that we may note it once for all) the benefit of Clergy was not taken away by any Act of Parliament in case of Felony. As for the Statute of Bigamis made in 4 E. 1. it was but an exposition and allowance of the constitution made at the generall Councell at Lyons concerning the same, as before hath been said. But (as we remember) the First Statute making a new felony that took away the benefit of Clergy, was the Statute of 7 H. 7. concerning Soudiers, Vide Lib. 8. fol. 160. & lib. 11. fol. 11. 4 H. 7. cap. 13. 12 H. 7. cap. ult. 7 H. 7. cap. 1.

CAP.

CAP. XX.

Of Felony in ſuch as uſe the craft of Multiplication.

5 H.4. ca.4.

NOne from henceforth ſhall uſe to multiply gold or ſilver, or uſe the craft of multiplication: and if any the ſame doe, he ſhall incur the pain of felony.

This is the ſhorteſt Act of Parliament that we remember; before the making whereof, divers of the Nobility, Gentry, and others did waſte and conſume a great part of their inheritance, and wealth, about the art of Multiplication, by the ſubtile and ſiniſter perſwaſion of certain impoſters, and deceivers, which took upon them to be skilfull therein, and to be able to multiply gold and ſilver, being themſelves for the moſt part very poor and indigent perſons, of whom it was ſaid, Quòd pollicentur aliis ingentes divitias, & ipſi petunt parvas drachmas. See Chaucer our Engliſh Poet, who wrote about the time of the making of this Act, in the tale of the Chanons Yeoman, fo. 63. (in libro meo,) that The end of this ſliding and curſed craft (ſo full of impoſture and deceit) is extream beggery: He is worth the reading, for he diſcovereth the ſecrets of this Craft, as our Act tearms it.

Now ſeeing the end of this feigned Art of Multiplication is meer deceit, and tendeth to the undoing of many; At this Parliament the uſe of this craft of Multiplication is made felony. For the better underſtanding of that which ſhall be ſaid, it is to be known, that there are ſix kinds of metalls, viz. Aurum, Argentum, Æs, ſive Cuprum, (quia inventum fuit in Cypro) Stannum, Plumbum, & Ferrum. That is to ſay, Gold, Silver, Copper, Tynne, Lead, and Iron; for Chalybs Steel is but the harder part of Iron, and Orichalcum, Aurichalcum, viz. Latten or Braſſe, is compounded of Copper and other things.

¶ The craft of Multiplication] That is, to change other metalls into very gold or ſilver. And this they pretend to doe by a Quint eſſence, or a fifth eſſence. Four Eſſences, or Elements we know, Fire, Aire, water and Earth, but ſay they, this Quint eſſence is a certain ſubtill, and ſpirituall ſubſtance extracted out of things by ſeparation from the four Elements, differing really from their eſſence, as Aqua vitæ, the ſpirit of wine, or the like, and this is called Elixar, or the Philoſophers ſtone, and it is part of Alchemie, or Chemie, in latine Ars Chemica. The offenders therein are called multipliers, Chemiſts, Alchemiſts, &c. There * may be Acceſſories to this new felony both before and after. King Henry the ſixth, by his Letters Patents, De concilii ſui deliberatione deputavit Willm Cautelo & alios cives civitatis London ad inveſtigandam veritatem ſuper hiis quæ in ſcriptis erunt eis monſtrata, pro multiplicatione Numiſmatis, tam de auro, quam argento, & quicquid in præmiſſis egerint, cum eorum opinione referrent in ſcriptis regi & concilio ſuo.

The like Letters Patents anno 35 H.6. pro Thoma Harvie & aliis.

Rex [b] ex ſua regali prærogativa, &c. dedit licentiam Johanni Faceby & aliis ad inveſtigandum, proſequendum, & perficiendum quandam precioſiſſimam medicinam, quintam eſſentiam, lapidem Philoſophorum nuncupatum, nec non poteſtatem faciendi & exercendi tranſmutationes metallorum in verum Aurum, & Argentum, with a Non obſtante of this ſtatute of 5 H.4. By theſe Letters Patents this Act is more explained, then by any Record we have ſeen.

How theſe ſeverall kinds of metals, as is ſuppoſed, proceed originally from Sulphur

* 7 E.6. Dier 88. Rot. Pat. 34 H.6. m.13.

a Ro. Pat. 35 H.6. b Ro. Pat. 34 H.6. m.7.

Hanc artem ſophiſticam impoſturam nominat *Me'anthon.* Mentiendi & fallendi artem. *Petrarch. Eraſ.* in Colloquio Dæmonis præſtigias. *Peucerus Chaucer* ubi ſupra. The curſed and ſliding craft. *Vertitur in fumum quicquid ineptus agit.* See *Pancirollus.* Int. nova reperta Tit. 7. fo. 357.

phur and quick ſilver, as from their father and mother, & other things concerning the ſame, you may at your leiſure read in George Agricola lib. 10. ca. 1. Encelms li. 1. ca. 1. Pl. com. 339. Vide Scanf. Pl. Cor. 37. b.

Almighty God in the fourth day created the earth, and no mention is made of metals, for that they were as parts of the earth. Gen. c. 1. v. 9. cap. 2. v. 11.

The fatall end of theſe five are beggery; This kinde of Alchymiſt, the Monopoliſt, the Concealer, the Informer, and Poetaſters.

Sæpe pater dixit, Studium quid inutile tentas?
Mæonides nullas ipſe reliquit opes.

I could give examples (of mine own obſervation) of all theſe, if it were pertinent to our purpoſe.

CAP. XXI.

Of Felony in hunters in the night, or with painted faces, in any Foreſt, Park, or VVarren.

AT every ſuch time as information ſhall be made of any unlawfull huntings in any Foreſt, Park, or Warren by night, or with painted faces, to any of the Kings Councell, or any of the Juſtices of the Kings Peace in the County where any ſuch hunting ſhall be had, of any perſon to be ſuſpected thereof, it ſhall be lawfull to any of the ſame Councell, or Juſtices of Peace, to whom any ſuch information ſhall be made, to make a warrant to the Sherif of ſuch County, or to any Conſtable, Bailif, or other officer within the ſame County, to take and arreſt the ſame perſon and perſons of whom ſuch information ſhall be made, and to have him, or them before the maker of the ſame warrant, or any other of the Kings ſaid Councell, or his Juſtices of Peace of the ſame County. And that the ſaid Counſellor or Juſtice of Peace, before whom ſuch perſon, or perſons ſhall be brought, by his diſcretion have power to examine him or them ſo brought, of the ſaid hunting, and of the ſaid doers in that behalf: and if the ſame perſon * wilfully conceal the ſame huntings, or any perſon with him defective therein, that then the ſame concealment be againſt every ſuch perſon ſo concealing felony, and the ſame felony to be enquired of and determined, as other felonies within this realm have uſed to be; and if he then confeſſe the truth, and all that he ſhall be examined of, and knoweth in that behalf, that then the ſaid offences of huntings by him done, be againſt the King our Soveraign Lord, but treſpaſſe finable, by reaſon of the ſame confeſſion, at the next generall Seſſions of the peace to be holden in the ſame County, by the Kings Juſtices of the ſame Seſſions there to be ſeſſed. And if any reſcous, or diſobeiſance be made to any perſon having authority to do execution, or Juſtice by any ſuch warrant, by any perſon, the which ſo ſhould be arreſted, ſo that the execution of the ſame warrant thereby be not had, that then the ſame reſcous and diſobeyſance be felony, inquirable, and deter- 1 H. 7. ca. 1.

* See the expoſition of this word [conceal] hereafter in this chap.

determinable, as is aforeſaid. And over this, it is enacted and ſtabliſhed, that if any perſon or perſons hereafter be convict of any ſuch huntings with painted faces, viſors, or otherwiſe diſguiſed, to the intent they ſhould not be known, or of unlawfull hunting in time of night, that then the ſame perſon or perſons ſo convict, to have like punition, as he or they ſhould have, if he or they were convict of felony.

Now let us peruſe the words of this new, and ill penned Law.

¶ By night, or with painted faces.] That is to ſay, either by night, or in the day with painted faces, for that doth equall the caſe of the night, in reſpect the offenders cannot be known, or diſcerned, in regard of ſuch diſguiſings. And albeit the body of the Act ſpeaketh only of painted faces, yet it extendeth to viſors and other diſguiſings, for thoſe words are in the Preamble rehearſing the miſchief, and the remedy muſt be appliable thereunto, and the laſt branch of this Act doth make this point clear.

¶ As information ſhall be made, &c. of any perſon to be ſuſpect.] Hereby it appeareth, that a bare information without ſhewing juſt cauſe of ſuſpition at the leaſt, is not ſufficient to ground a warrant according to this Act, for the words be, [Of any perſon to be ſuſpected.] And this Act is generall, and extends to all perſons of what eſtate or degree ſoever, and as well to women, as to men: for the words be [if any perſon.] And generalia verba ſunt generaliter intelligenda. And it is neceſſary for him that taketh the information, to take it in writing, becauſe it is the ground of his warrant.

21 E. 1. tit. Foreſts Raſt. 19.

¶ Of any unlawfull huntings in any Foreſt, Park, or Warren.] This Act doth not extend to any Chaſe of the King, or of any other perſon, neither doth it extend to any Foreſts, Parks, or Warrens in uſe or reputation, and which are not Foreſts, Parks, or Warrens in law. See the 1. part of the Inſtitutes Sect. 378. what a Foreſt, a Chaſe, and a Park, &c. is.

¶ To any of the Kings Councell.] This is underſtood of the Kings Privy Councell; and any one will ſerve, but he muſt be dwelling in the County where ſuch offence is committed.

¶ Or to any the Juſtices of the Kings Peace, &c.] And likewiſe any one Juſtice of the Peace will ſerve.

¶ Warrant.] This warrant ought to be in writing under the ſeal of him that maketh it.

¶ Before the maker of the ſame warrant, or any other, &c.] So as the Officer may carry the party arreſted before any Privy Counſellor, or Juſtice of Peace within that County, and to that effect muſt the warrant be made.

¶ By his diſcretion have power to examine him or them ſo brought of the ſaid hunting, and of the doers in that behalf.] So as the examination muſt conſiſt upon two parts. Firſt, of the hunting by the party himſelf. Secondly, of other doers in that behalf.

D. Haward tempore H. 1. fo. 24. Vide Holl. 10 R. 1. 153. Vide Camden Brit. 210.

¶ And if the ſaid perſon wilfully conceal the ſaid hunting, or any perſon with him defective therein.] This branch being in the diſjunctive, if he conceal either his own offence, or of the other miſdoers with him therein, the letter of this Act is that it is felony, but by conſtruction

ſtruction upon the whole ſtatute, it is no felony: And a hunting without killing of any game, is within the danger of this ſtatute.

This Act is to be taken ſtrictly; for it is the firſt law that was made for the making of any hunting felony, againſt that excellent and equall branch of Carta de Foreſta. Nullus de cætero vitam vel membra pro venatione noſtra, &c. See the ſtatutes of 21 E.1. 1 E.3. ſtat.1.cap.8. 7 R.2, cap.4. Weſtm.cap.8. Regiſt. fol.9. F.N.B. fo.67. Vet.N.B. 41. 45 E.3.7. 33 H. 8. Dier 50. Cart. de Foreſt. cap.10.

The old ſtatutes concerning the Foreſts are called the good old Laws, and Cuſtomes, and commanded to be obſerved; and therefore this new Act of H.7. is too ſevere for beaſts that be feræ naturæ, whereof there can be no felony by the Common law, and that in caſe of the Foreſts, Parks, &c. of ſubjects which never was before: And therefore the Judges have made a favourable conſtruction, as hereafter in this Chapter you ſhall find. Ror.Parl.9 H.4. nu.40.

¶ And if he confeſſe the truth, and all that he ſhall be examined of, and knoweth in that behalf.] That is, of his own guiltineſſe, and of other misdoers with him, then this Act makes it no felony, but treſpaſſe finable, as it was before: But it muſt be a wilfull concealment; therefore if he knew not the names of the other misdoers, or knew not whether they were there or no, it is no offence, for the concealment muſt be wilfull. And ſeeing there is no time limited by this Act, and the concealment ought to be wilfull, it were reaſon, that the information ſhould be made in convenient time after the fact done.

¶ And if any reſcous or diſobeiſance be made to any perſon having authority to do execution of Juſtice by any ſuch warrant by any perſon, the which ſo ſhould be arreſted, ſo that execution of the ſame warrant be not had, that then the ſame reſcous & diſobeiſance be felony. Here it is to be obſerved that the hunting being as yet no felony, the reſcous could not be felony, if this branch had not been. Herein two things are to be conſidered; Firſt, that it extendeth not but to the reſcous, or diſobeyſance, that is committed by the party himſelf, that is to be arreſted, and not to any other. Secondly, that if the party reſcue himſelf, yet if he be purſued and taken, ſo as execution of the warrant be had, it is no felony, as it is manifeſt by the letter of this branch.

¶ And over this be it enacted, &c. That if any perſon or perſons hereafter to be convict of any ſuch huntings with painted faces, viſors, or otherwiſe diſguiſed, &c. or of unlawfull hunting in the night, * that then the ſame perſon or perſons ſo convict, to have like punition, as he or they ſhould have, as if they were convict of felony.

* Nota [that the] &c. So as before ſuch conviction there is no felony.

Gerard the Queens Attorney generall (who was a grave and reverend man) ſaid openly in the Kings Bench, that it had been reſolved by the Juſtices upon this ſtatute, that if a man in the night, or by day with painted face doe hunt, &c. and being examined according to the act and concealeth it, this is (upon the conſtruction of the whole Act) no felony; for the firſt clauſe concerning concealment, and this clauſe which now we handle, muſt be coupled or joyned by conſtruction together, viz. If any perſon be convict of ſuch hunting with painted face, or of unlawfull hunting in the night, this conviction muſt be upon not guilty pleaded, which the Juſtices expounded to be the * concealment intended in the firſt branch, for they held that it ought to be a judiciall concealment, and not an extrajudiciall concealment, before one of the Privy Councell, or a Juſtice of Peace which may lie in averment, ſo as before it be felony, he muſt be convicted of ſuch hunting, &c. upon not guilty pleaded firſt: and after ſuch conviction Mic. 19 & 20 El. in the Kings Bench a report of the reſolution of the Juſtices upon this branch.

* Concealment expounded.

then muſt he be indicted again, Super tota materia, that he felonicè did conceal, &c. againſt the form of the ſtatute: and if the offender upon the firſt indictment confeſſeth the indictment, then it is ſuch a judiciall confeſſion as this Act intendeth, and no felony within this ſtatute. And this we heard the Attorney report, and then obſerved it, which concurring with our own opinion we thought good to publiſh, and the rather for that in maſter Lambards book of Juſtice of Peace, amongſt his Precedents of Indictments, an erroneous Precedent of an indictment is of felony for the concealment, &c. upon examination before Juſtices of Peace.

Dier 33 H.8. fol. 50. a. It is ſaid in 33 H. 8. that chaſing in Parks is made felony, (intending this ſtatute) notwithſtanding it may be made treſpaſſe at the pleaſure of the party, which we think is the cleareſt way.

Now what time ſhall be adjudged night, See before in the Chapter of Burglary. For this felony the Delinquent may have his Clergy: See Stanford fo. 37. b.

CAP. XXII.

Of Felony for Imbeſilling the Kings Armour, Ordnance, &c. or Victuall, to the value of Twenty ſhillings, provided for Souldiers.

31 El. cap. 4. BE it enacted by the Authority of this preſent Parliament, that if any perſon, or perſons, having at any time hereafter the charge or cuſtody of any Armour, Ordnance, Munition, Shot, Powder or Habillements of warre of the Queens Majeſties, her heirs, or ſucceſſors, or of any victuals provided for the victualling of any Souldiers, Gunners, Mariners, or Pioners, ſhall for any lucre, or gain, or wittingly, adviſedly, and of purpoſe to hinder or impeach her Majeſties ſervice, imbeſill, purloin, or convey away any the ſame Armour, Ordnance, Munition, Shot, or Powder, habillements of war, or * victualls, to the value of twenty ſhillings, at one or ſeverall times: That then every ſuch offence ſhall be judged felony, and the offender and offenders therein to be tried, proceeded on, and ſuffer as in caſe of felony. Provided always, and be it enacted by the authority aforeſaid, that none ſhall be impeached for any offence againſt this Statute, unleſſe the ſame impeachment be proſecuted or begun within the year next after the offence done. And that this Act, nor any thing therein contained, nor any attainder nor attainders of any perſon or perſons for any offence made felony by this Act, ſhall in any wiſe extend, or be adjudged, interpreted, or expounded to make the offender or offenders to forfeit, or loſe any lands, tenements, or hereditaments any longer, then during his or their life or lives, or to make any corruption of blood to any the heire or heires, of any ſuch offender or offenders, or to make the wife of any ſuch offender to loſe or forfeit her dower, or title of dower, of or in any lands, tene-

* Nota for Victuals.

tenements, or hereditaments, or her action or intereſt to the ſame: any thing in this Act contained, or any Attainder or Attainders hereafter to be had for any offence made felony by this Act to the contrary notwithſtanding. And that ſuch perſon and perſons, as ſhall be impeached for any offence made felony by this Statute, ſhall by vertue of this Act be received, and admitted to make any lawfull proofe that he can, by lawfull witneſſe or otherwiſe, for his diſcharge and defence in that behalf, any Law to the contrary notwithſtanding.

This is a neceſſary law, and ſo penned, as it requireth no curious expoſition.

¶ Ordnance.] That is, Guns or Artillery, ſo called, of an Order, or Ordinance anciently made, of what bore, ſize, or bulk the ſame ſhould be. And albeit the Ordinance (that I [illegible]n finde) is not extant, yet the name remaineth.

¶ Habillements of warre.] Habillement is properly apparell or clothing: but in legall underſtanding it doth not only extend to Harneſſe and Armour, but to all Utenſils that belong to war, without which men have not ability to maintain war.

This Act making a new felony, hath five excellent proviſions, worthy to be imitated in all like caſes of new felonies. Firſt, that none ſhall be impeached for this new felony, but within a yeare after the offence done. Secondly, that the offender ſhould not loſe his lands any longer then during his life. Thirdly, this Act makes not any corruption of blood, but that his heire ſhall inherit. Fourthly, not to make the wife loſe her dower. Fifthly, that ſuch perſons as ſhall be impeached for any offence made felony by this Act, ſhall be admitted to make any lawfull proofe [a] by witneſſe, or otherwiſe for his diſcharge and defence in that behalfe.

Bonum eſt ſcire & ſequi.

Vid. hereafter, Cap. of felony for any having a Plague ſore a more ſpeciall proviſion.

a Nota.

In the ſtatute of 4 Jacobi Regis, there is alſo a good preſident, viz. [All which trials (viz. in caſes of felony in that Act before mentioned) [b] firſt for the better diſcovery of the truth, and ſecondly, for the better information of the conſciences of the Jury and Juſtices, there ſhall be allowed to the party ſo arraigned the benefit of ſuch witneſſes only to be examined upon oath, that can be produced, for his better clearing and juſtification]: that as witneſſes are produced and ſworn againſt him, ſo he may have witneſſes produced and ſworne for him, for Jurato creditur in judicio. And to ſay the truth, we never read in any Act of Parliament, ancient Author, Book caſe, or Record, that in criminall caſes the party accuſed ſhould not have witneſſes ſworn for him; and therefore there is not ſo much as ſcintilla juris againſt it. And I well remember when the Lord Treaſurer Burleigh told Queen Elizabeth, Madame, Here is your Attourney Generall (I being ſent for) Qui pro Domina Regina ſequitur; ſhe ſaid, ſhe would have the form of the Records altered; for it ſhould be Attornatus Generalis qui pro Domina veritate ſequitur. And when the fault is denied, truth cannot appear without witneſſes.

4 Jac. regis, cap. 1.

b Nota, two excellent means for advancement of juſtice.

Hobelarius (id eſt, a Light horſeman) Electus in Scotiam recepit armaturas & denarios, ibidem ſerviturus, poſtea non proficiſcitur per mandatum Regis, & recuſavit reddere armaturas, & denarios, &c. per Juratores eſt culp. & committitur Mareſchallo, & finivit Regi 10. li. & invenit ſecuritatem ad armaturas redeliberandas, &c.

Hil. 16 E. 3. coram Rege. Rot. 129. Norff.

CAP. XXIII.

Of Felony in such as passe the Sea to serve Forain Princes, &c. or do serve Forain Princes, &c. without taking the Oath of Obedience.

3 Jac. cap. 4.

EVery Subject of this Realme that shall go or passe out of this Realm to serve any Forain Prince, State, or Potentate, or shall passe over the Seas, and there shall voluntarily serve any such Forain Prince, State, or Potentate, not having before his or their going or passing, as aforesaid, taken the Oath of Obedience (prescribed by that Act) before the Customer and Controller of the Port, Haven, or Creek, or one of them, or their or either of their Deputy or Deputies, shall be a Felon.

Some have objected, that the going or passing out of this Realm, to serve, &c. cannot be tried; for that offences done out of the Realm, cannot without a speciall provision be tried within the Realm. And it is a sure Rule, that in criminall causes concerning life or member, Ubi deliquit, ibi punietur: the offence is locall, and cannot be tried, but where it is committed, nor cannot be alleaged to be in any other place, then where in truth it was done. To this it is answered, that by a latter clause in this Act, this felony shall be tried in the Town wherein the Haven or Port is, wherein he went or passed over: which Clause is, And be it further enacted, that all and every offence to be committed or done against this present Act, shall and may be inquired of, heard, and determined before the Justices of the Kings Bench, Justices of Assize and Gaole-delivery in their severall Assises; and all offences, other then Treason, shall be inquired of, heard, and determined before the Justices of Peace in their Quarter Sessions, to be holden within the Shire, Division, Limit, or Liberty, where such offence shall happen. So as by the Purview and meaning of the makers of this Act, this felony must be tried in the County where he went or passed over, and consequently in that Town where part of the act was done. And these words [and wherein such offence shall be committed] must be construed in this case, where part of the offence is committed. For, Sic interpretandum est, ut verba accipiantur cum effectu: and by the expresse words, all and every offence to be committed or done against this present Act must be inquired of, heard, and determined, &c. And therefore the felony cannot passe away with impunity, and that which is done out of the Realm shall be proved to the Jury in evidence. Note where a forain treason by this Act is made, it is enacted to be tried where the offender is taken.

See 33 H. 8. ca. 7. Simile.

¶ Every subject of this Realme.] This branch extends to all persons of what estate, degree, or profession soever.

¶ To serve] Albeit the party did not serve, yet if the offender went or passed over to serve without taking the oath, he is in danger of this Statute. And this extendeth to any kinde of service, either in Camp or Army, or in house or otherwise.

¶ Any foraine Prince.] [Princeps] Prince is here taken for the person that is Primus, i. Qui primum locum, & gradum obtinet, whether he be King, or any other that hath soveraigne authority, by what name or title soever.

Prince.

The

The word hath other ſignifications, but not pertinent to the expoſition of this Act.

¶ State.] The former word [Prince] includeth any, that is a Monarch, or in nature of a Monarch, or an abſolute Prince. This word [State] extends to any State, either Ariſtocraticall, where few be in authority, or Democraticall, where the people have the chief government without any Superiour, ſaving ſuch as they elect and chooſe. State.

¶ Potentate.] This is a large word, and extendeth to Potentates as well Eccleſiaſticall as Temporall. Potentate.

¶ Or ſhall paſſe, &c. and there ſhall voluntarily ſerve.] Although he went not over of purpoſe to ſerve, but upon ſome other occaſion: yet if he after voluntarily ſerve any ſuch foraine Prince, State, or Potentate, and have not taken the Oath, he is a felon.

¶ The Oath of Obedience.] This is particularly ſet downe in the ſaid Act.

¶ And that if any * Gentleman or perſon of higher degree, or any perſon or perſons, which have born, or ſhall bear any office or place of Captain, Lieutenant, or any other place, charge, or office in Camp, Army, or Company of Souldiers, or Conductor of Souldiers, ſhall after goe or paſſe voluntarily out of this Realm to ſerve any ſuch Forain Prince, State, or Potentate, or ſhall voluntarily ſerve any ſuch Prince, State, or Potentate, before he and they ſhall become bound by Obligation with two ſuch ſureties, as ſhall be allowed by the Officers, &c. ſhall be a Felon.

* Vid. hereafter cap. 34. in fine. Second part of the Inſtitutes. The Statute of additions. 1 H. 5. cap. 5.

By this Branch, if he be a Gentleman, or of higher degree, or any ſuch Military Man, as here is deſcribed; becauſe he is able to doe more harm, if he be ſo diſpoſed, he muſt not onely take the Oath by the former branch, but he muſt become bound by this branch with two ſureties, &c. The forme of the Obligation is ſet down in this Act. The expoſition of the former branch giveth light to the underſtanding of the reſidue of this Clauſe.

There is a Proviſo, that no attainder of felony, made felony by this Act, ſhall take away dower, nor make, or worke, any corruption of blood, or diſherſon to the heire. The offenders in any of the ſaid caſes of felony may have the benefit of their Clergy.

CAP.

CAP. XXIV.

Of Felony in Purveyors.

See in the fourth part of the Institutes, cap. Chancery. Articles against Cardinall Woolsey. Artic. 33,35,36.

SEE the Statutes of Artic. super Cartas, anno 28 E.1.cap.2,18 E.2.cap.ult. 5 E.3.cap.2. 25 E.3. cap.1. & 15. 27 E.3.cap.1. 36 E.3.cap.2. And before in the Second part of the Institutes, in the exposition of the Statute of Artic. super Chartas, cap.2. you shall finde in what case a Purveyor may be charged with felony, which briefly may be reduced to these four Heads. First, if [a] any that take upon him to be a Purveyor, or his deputy or servant make purveyance of any thing above twelve pence without Warrant. Secondly, [b] or make purveyance of any thing above twelve pence without testimony and apprisement of the Constable, and four honest men, and without Delivery of Tales. Thirdly, [c] or take any sheep with their woolles between Easter and Midsummer, and carry them to his own house and sheer them. Fourthly, [d] or make any takings or buyings, or take any carriage in other manner then is contained in their Commissions, they shall have punishment of life and member: and this Act remains still in force without alteration. The offenders may have the benefit of their Clergy.

a Artic. sup. Cart. cap.2.
18 E.2.cap.ult.
5 E.3.cap.4.
b 5 E.3.cap.2.
25 E.3.cap.1.
c 25 E.3.cap.15.
d 36 E.3.cap.2.
Vid. Stanf. Pl. Cor. 37.b.
e 27 H.8.cap.24.

By this Statute it is enacted, that Purveyors assigned by Commission shall make purveyance of victuals, corn, and other things, as well within Liberties and Franchises, as without, any grant, allowance, or other thing to the contrary, or let thereof notwithstanding: but the Purveyors shall observe the statutes for them provided in every behalfe, as by that Act appeareth. Upon this Act it was holden, that if the discharge of Purveyance were by Letters Patents, this Act makes it of no force: but if the discharge were by statute, then the Purveyor is bound to observe the Statute, as by the statute of 14 E. 3. cap.1. pro Clero, Ecclesiasticall persons are discharged by statute, which the Purveyor is bound to observe. See the Statutes of 25 E. 3. statut. 5. cap.21. & 43 E.3. cap.3. in what manner and in what time the Kings Butler or his Lieutenant shall take Wines, &c.

f Trin. 40 Eliz. coram Rege. In a Quo Warrant. the Lord Darcies case.

See more of Purveyors in the fourth part of the Institutes Cap. of the Counting house or Green cloth.

See Lib.8.fo.45,46. in Evans Case, a Commission for taking up of boyes for the Kings Chappell, the generall words well expounded.

By an Act of Parliament not in print, it is enacted that no purveyor arrested for any misdemeanour shall have any Privy Seal, to cause such as arrested him to come before the Councell to answer to the King, but have his remedy by the Common law.

Rot. Parl. Anno 28 E.3. nu.34.

Upon a grievous complaint made at the Parliament holden in the fourth year of our late Soveraigne Lord King James, by the Commons of the Realm, concerning many grievances suffered by his subjects in the execution of a Commission granted to certain persons for getting of Salt-peter, his Majestie answer (amongst other things) was, that he had never an intention to make any application of his Prerogative therein, further then might stand with the lawfull, and necessary use thereof. And further his Majesty was pleased out of his gracious care and goodnesse to revoke and annull all Commissions, or grants made to any person or persons, for and concerning digging, and working of Salt-peter, intending to consider of such a course afterwards, as the same might be made without any just cause of complaint, as by the said royall answer (amongst other things) more at large appeareth. In pursuance whereof, by the said Kings commandment, Popham Chief Justice, and all the Justices of England, and Barons of the Exchequer, were assembled at Serjants-Inne in Fleetstreet, in December, in the said fourth year, to resolve and certifie, what

At a Parliament holden 4 Jacobi Regis.

Salt-peter, *quasi* Salis petræ, colligitur aut ex materia quam veteres muri, rupes, & saxa exsudant, aut ex terra salsuginosa & puta, quæ in stabulis animalium urinam ad multos annos excepit, Latine *Nitrum*.

what Prerogative the King had for digging, and taking of Salt-peter in the houſes, buildings, or grounds of his Subjects, that thereupon a new Commiſſion might be made accordingly, who upon often conferences, and mature conſideration reſolved as followeth.

First, where it was objected, that Gunpowder was invented in Germany, within time of memory, in the reign of King E. 3. ſo as the King could not claim it by preſcription: and that before the 31 year of the reign of Queen Eliz. (which was the year after the Spaniſh Invaſion) we, as yet, find not any Commiſſion or licence granted by any King or Queen of this realm to any for the digging or taking of Salt-peter: And in the ſaid 31 year of the ſaid late Queen, two Commiſſions or Licences were granted, the one particular, to George Conſtable Eſquire, to dig, open, and work during the ſpace of eleven years for Salt-peter within the Counties of York, Nottingham, Lancaſter, Northumberland, Cumberland, and the Biſhoprick of Durham, as well within our own lands, grounds and poſſeſſions, as alſo within the lands, grounds, and poſſeſſions of any of our loving ſubjects within the Counties aforeſaid; and the conſideration of the Grant was, that he ſhould deliver a great quantity of powder to be made by the ſaid George Conſtable, and provided for the ſtore of the Queens Majeſty at a lower rate, then was paid for it before, with this further clauſe; [And further our will and pleaſure is that the ſaid George Conſtable ſhall at his own proper coſts and charges erect, make up, and lay all mud walls, ſtables, and grounds whatſoever ſo digged up;] whereupon it was inferred that no other buildings could be digged up by force of that Commiſſion, but only ſtables. The other Commiſſion was generall, made unto George Evelyn, Richard Hils, and John Evelyn, and extended throughout the Realms of England and Ireland, and all other the dominions of the ſame, as well within our own proper lands, grounds, and poſſeſſions, as alſo within the lands, grounds, and poſſeſſions of any of our ſubjects, with the like clauſe of the erection and reparation, as is aforeſaid, without naming of Manſion houſes by expreſſe words, and without any prohibition to the ſubject to dig for Salt-peter in their own buildings or grounds.

In the Accounts, &c. from the 21 of April 18 E. 3. for one year following Anno Domini 1344. under the title of Artificers and Workmen (inter alios) Gunners 6. And of their wages and ſtipends per diem, it is ſaid (amongſt others) Gunners ſixe pence. *Latine* Bombardæ, Tormenta, Sclopi.

Paſch. 49 E. 3. Coram Rege Rot. 27. Oxon. Diverſi malefactores venerunt ad Manerium, &c. cum Arcubus, Sagittis, Baliſcis & Goons.

Vide Rot. Parl. 1 R. 2. nu. 38. William Captain of the Caſtle of Catherick, being charged for delivering it to the enemy, in the reign of E. 3. without Commiſſion, anſwered (inter alia) that the enemies brought to battery thereof nine peeces des groſſes Cannons.

Hollingſh. fo. 453.

Walſing. 10 R. 2. 1366.

Pol. Virgil. De Invent' rerum. fo. 2. cap. 11.

Pancerollus Nova reperta. Tit. 18. pag. 679. Anno Domini 1378.

John Moore pag. 196. Anno Domini 1382.

As to the firſt, it was reſolved by all, That foraſmuch as the taking of Salt-peter, was for the neceſſary defence, and ſafety of the Realm, that the King had a right of purveyance of it; and ſhould not be driven to buy it in forain parts, which forain Princes might reſtrain, and ſo this Realm might want ſufficient for the defence thereof, to the great perill, and hazard of the ſame: but the King was to take it, for the neceſſary defence of the Realm, according to the limitations hereafter expreſſed; and it is no prejudice to the owners of the ſoyl, for the place that is digged muſt be made up again, and repaired in as good plight as it was before. Secondly, that this taking of Salt-peter in the buildings or grounds of the ſubject, being a purveyance as is aforeſaid, is an incident inſeparable to the Crown, and cannot be granted, demiſed, or tranſferred to any other, but ought to be taken only by the Kings Miniſters, as other purveyances ought, and cannot be converted to any other uſe, then for the defence and ſafety of the Realm, for which purpoſe only the law doth give to the King this prerogative; And it is not like to a mine of gold or ſilver in the ground of the ſubject, for there the King hath an intereſt in thoſe metals, and not purveyance only. And if the powder which is ſo made by the Kings Miniſters begin to decay, as it will doe within two or three years, then this either ought to be changed for other, or ſold, and the money thereof coming to be employed for powder for the defence of the Realm, and the Kings miniſters ought to make great proviſion of Salt-peter, for that will laſt a long time, and when need

Purveyance of Salt-peter. See the 1. part of the Inſtitutes. Magna Carta cap. 21.

2.

need is to make thereof gun-powder, which will be made before the Navy can be put in readineſſe, &c.

3. Thirdly, the Miniſters of the King cannot in digging for Salt-peter undermine, weaken, or impair any of the walls or foundations of any of the houſes of the ſubject, be they Manſion houſes, or Out-houſes, as Barns, Stables, Dove-houſes, Mills, or the like, neither can they digge the floor of any Manſion houſe, which ſerves for the habitation of man, becauſe his Manſion is the ſafeſt place of refuge, and ſafety of himſelf and his family, as well in ſickneſſe, as in health, and his defence as well in the night, as in the day, againſt felons, and misdoers; neither can the Kings miniſters dig the floor of any Barn of the ſubject employed for the ſafe keeping of Corn, Hay, &c. for the floor of a Barn cannot be made dry, or ſerviceable again in a long time, but they may dig in the floors of Stables, and Dreſſehouſes, ſo that they leave ſufficient room there for the horſes, and other beaſts of the owner, and ſo that they repair the ſame again in convenient time, as well as it was before. They may alſo dig in the floors of cellars, and vaults, ſo that the wine, beer, or other neceſſary proviſion of the owner be not removed, or in any ſort impaired: And they may dig any mud wals, which be not the wals of any Manſion houſe, and in the ruines and decayes of any houſes which be not preſerved for the neceſſary habitation of man.

4. Fourthly, they ought to make the places as well and commodious for the owner,

5. as they were before. Fifthly, they ought not to work in the poſſeſſions of the ſubject, but between the riſing of the Sun, and the going down of the ſame, ſo as the owner may make faſt the doors of his houſe, and put it in defence againſt

6. misdoers. Sixthly, they ought not to place or fix any furnace, beſell or other neceſſaries in any houſe or building of the ſubject, without his conſent, nor ſo neer

7. any manſion as he by it may receive any prejudice or diſquiet. Seventhly, they ought not to continue in one place above a convenient time, nor return thither

8. but after a long time. Laſtly, that the owner of the ſoyl cannot be reſtrained from digging, or taking of Salt-peter, for the property thereof is in the owner of the ſoyl, and the King hath but the purveyance thereof, and that every man might work that would, and then there ſhould be more plenty of powder, and at a cheaper rate. And theſe reſolutions are agreeable with that Maxime,* That the Common law hath ſo admeaſured the Prerogatives of the King, that they ſhould neither take away nor prejudice the inheritance of any. And theſe Monopolies being Malum in ſe, and againſt the Common laws, are conſequently againſt the Prerogative of the King, for * the Prerogative of the King is given to him by the Common law, and is part of the laws of the Realm. Which reſolutions were delivered in writing by Popham Chief Juſtice unto the Kings Privy Councell, as the unanimous reſolution of all the Judges, and Barons of the Exchequer, and were by his Majeſties Privy Councell well allowed of, and approved, as Popham Chief Juſtice reported. Upon theſe reſolutions theſe conſequents do follow. Firſt, if a man of his own Authority, or by colour of any Commiſſion, Licence, or Grant, doth take upon him to take any Salt-peter in the buildings, or grounds of any other ſubject to make thereof gunpowder, in any ſort to his own uſe, albeit he covenanteth, or agreeth to ſerve the King of ſo many laſts of powder: yet ſeeing it is but a purveyance, he cannot ſell any powder thereof made to any of the Kings ſubjects, or make any private benefit thereof: and if he doe, he may be indicted of digging, and taking of the Salt-peter at the Kings ſuit, and be grievouſly fined and impriſoned, for that it is a grand treſpaſſe with an high hand. Secondly, the party grieved may have his Action of treſpaſſe, and recover damages for the treſpaſſe, &c. according to the quality of the treſpaſſe.

* Pl. Com. 2, 6.

* Stanf. Pl. Cor. 162. 2. Stanf. Prer. 5. b.

[a] Complaints made againſt Purveyors in Parliament.

[b] By the ſtatute of 9 R. 2. all ſtatutes made concerning purveyors be confirmed, and to be put in execution, and that Juſtices of peace have power to hear and determine their offences. See the Fourth part of the Inſtitutes cap. 8. Art. 33, 35, 36. againſt Cardinall Woolſey.

a Rot. Parl. 4 H. 4. nu. 111. Eodem Anno 81. 9 H. 4. 15.

b Rot. Parl. Anno 9 R. 2. nu 31. not in print

CAP.

CAP. XXV.

Of Felony in wandring Souldiers and Mariners.

1. ALL idle and wandring Souldiers or Mariners, or idle persons wandring as Souldiers or Mariners, shall be reputed felons, and suffer as in case of felony. 39 El. cap. 17.

So as not only he that is a Souldier, or Partner indeed, but he that is an idle wanderer, and takes upon him to be a Souldier or Partner, though in troth he be none, is in danger of this law; for, as the Preamble saith, they abuse the name of that honourable profession.

2. Every idle, and wandring Souldier or Partner, which comming from his Captain from the seas, or from beyond the seas, that shall not have a testimoniall under the hand of some one Justice of Peace, of or neer the place where he landed, setting down therein the time and place when, and where he landed, and the place of his dwelling and birth, unto which he is to passe, and a convenient time therein limited for his passage, is by this Act adjudged a Felon.

3. Or if he hath such a testimoniall, and shall exceed the time therein limited above fourteen days, he is by this Act a felon, unlesse he fall sick by the way, so as after his recovery he setteth himself in some lawfull course of life, or resort to the place where he was born, or was last abiding: but in both these two cases he must be a Souldier or Partner in deed.

4. If any such idle and wandring Souldier or Partner, or other idle person wandring as Souldier or Mariner, shall forge or counterfeit such testimoniall, he is by this Act a Felon.

5. Or if he shall have with him or them any such testimoniall forged or counterfeit, knowing the same to be counterfeit or forged, he is also by this Act a felon. And in both these last cases, as well he that is a Souldier or Mariner in deed, as he that is none, is in danger of this Act.

And the offender against any of the Articles of this Statute shall not have the benefit of his Clergy.

Justices of Assise, Justices of Gaole delivery, and Justices of Peace, have power by this Act to hear and determine the said felonies.

But if some honest person valued in the last Subsidy to ten pounds in goods, or Forty shillings in lands, or some honest freeholder, as by the said Justices shall be allowed, will be contented before such Justices to take him or them into his service for one whole year, and will become bound by recognizance, as the Statute doth appoint, then they shall not proceed any further against him, unlesse such person retained depart within the year, without the licence of him, that so retained him; and then he is to be indicted, tried, and judged as a felon, and not to have the benefit of his Clergy.

CAP. XXVI.

Of Felony in Souldiers that depart from their Captains without licenſe.

18 H. 6. cap. 19. 5 Eliz. cap. 5. extendeth it to Mariners and Gunners.

THis Statute is become of little force or uſe: for the ancient manner of retainer of Souldiers whereunto that Act referreth, is utterly altered: for then Knights or Gentlemen expert in war, and of great revennes and livelihood in their Countrey, covenanted with the King to ſerve him in his war for ſuch a time with ſuch a number of men: and the Souldiers made their covenant with their Leaders or Maſters, and then they were muſtered before the Kings Commiſſioners, and entred of Record before them; and that was certified into the * Exchequer; and thereupon they took their wages of the King, as it appeareth by many preſidents of the Exchequer, and may be gathered by the preamble and body of the Act, and by the Regiſter, where it appeareth, that a Writ was framed upon that Statute directed to a Serjeant at Arms ad capiend' conductos ad proficiſcend' in obſequium &c. And this was thought an excellent Military policy, that the ſouldiers, (part whereof were of their own tenants) ſhould be choſen and led by Knights and Gentlemen of quality of their own Countrey, with whom they muſt fight in war, and live withall in peace, when they returned into their countrey, in reſpect whereof, the ſouldier would the more chearfully and obediently follow his Leader, and the Leader would the more reſpectfully and lovingly uſe his ſouldier when he is abroad. See the ancient form of Commiſſions for arraying and muſtering of men in 5 H. 4.

* By the ſtatute of of 5 R. 2. cap. 11.

See the Writ in the Regiſter 191. directed to the Serjeant at armes.

5 R. 2. cap. 10. Rot. Parl. 5. H. 4. nu. 29. the like for keeping of Caſtles & Forts.

Rot. Parl. 5 H. 4. nu. 24, 25.

By this Act the benefit of Clergy was not taken away from the Delinquent.

2 E. 6. cap. 2. renued 4 & 5 Ph. & Mar. cap. 3. 1 Jac. cap. 25.

The Statute of 2 E. 6. cap. 2. extendeth only when the ſouldier departs after that he hath ſerved the King in his war: And ſuch an offender ſhall not enjoy the benefit of his Clergy.

7 H. 7. cap. 1. 3 H. 8. cap. 5.

If any Souldier being no Captain, immediately retained with the King, which ſhall be in wages and retained, or take any preſt to ſerve the King upon the ſea, or upon the land beyond the ſea, depart out of the Kings ſervice without licence of his Captain, that ſuch departing be taken, deemed, and adjudged felony. And that all the Juſtices in every ſhire of England, where any ſuch offenders be taken, have power to enquire of the ſaid offences, and the ſame to hear, and determine, as they do and may do of felony, &c. expreſſed in the Kings Commiſſion to them made, as though the ſame offences were done in the ſame ſhire; and alſo that the departing of ſuch Souldiers, and alſo their retainers, if it be traverſed, be tried in the ſame ſhire, where they be for ſuch a cauſe arreſted, and arraigned.

Both theſe Acts of 7 H. 7. and 3 H. 8. are perpetuall Acts, for this word [King] includeth all his ſucceſſion.

Lib 6. fo. 27. Caſe de ſouldiers. Dier 4 Eliz. 211.

¶ Without licence of his Captain.] The Statute of 3 H. 8. is without licence of the Kings Lieutenant there.

¶ That all the Juſtices in every ſhire of England, where any ſuch offenders be taken, &c.] This Act of 7 H. 7. extends to all the Kings Juſtices in every ſhire, viz. Juſtices of Aſſiſe, Gaol Delivery, Oier and Terminer, and of the Peace. And if the offender be taken in the County where

where the Kings Bench ſet, he may be indicted, &c. there: but this clauſe in 3 H.8. is reſtrained to Juſtices of Peace. This clauſe in both the ſaid ſtatutes is cumulative, and for more ſpeedy proceeding with the offender. But admit the offender be never taken, yet may he be indicted of felony in the County where the departure was, and if he appear not, he may be outlawed, for by the firſt clauſe, the offence is made felony, and the ſecond clauſe is affirmative, and not priuative. See Sranf. pl. cor. fo. 168. c.

¶ Hee or they ſo offending ſhall not enjoy the benefit of his Clergy.] This branch in the Act of 7 H.7. is generall, but in the Act of 3 H.8. there is an exception out of the like branch, viz. of men being within orders of holy Church. So as it differeth much, whether he be indicted upon the one ſtatute, or the other.

But obſerve what punishment the ancient law of England inflicted upon the Souldier that departed from the Kings Hoſt, both before, and ſince the Conqueſt. Item qui fugiet à domino, vel ſocio ſuo pro timiditate belli, vel mortis, in conductione Heretochii ſui in expeditione navali, vel terreſtri, perdat omne quod ſuum eſt, & ſuam ipſius vitam, & manus mittat dominus ad terram quam ei antea dederat. For the expoſition of Heterochius and Hereſlite, ſee the Fourth part of the Inſtitutes, cap. Court de Chivalry. Lamb. Inter Leges Edovardi fo. 136. Hoven. Annal. 35. Pœna Hereſlitæ.

Now concerning Armour, Arms, Charges of ſouldiers, muſtering of them, &c. See the ſtatutes in print of Confirmat. Cart. 25 E.1. Vet. Magna Cart. 2. parte, fol. 35. 1 E.3. cap. 5. 18 E.3. cap. 7. 25 E.3. cap. 8. 4 H.4. cap. 13. 11 H.7. cap. 7. and 3 H.8. cap. 5. and 4 & 5 Ph. & Mar. cap. 3. for appearing at muſters, &c. But 4 & 5 Ph. & Mar. cap. 2. an Act for having of Horſe, Armour, and weapon is repealed by the ſtatute of 1 Ja. cap. 25.

An Act not in print, Rot. Parl. Anno 5 H.4. nu. 24, 25. for arraying and muſtering of men, for watching of Beacons, &c.

Records of Parliament, 4 H.4. nu. 48. 7 H.4. nu. 124. 1 H.5. nu. 17.

Book caſes, 48 E.3. 3, 4. 21 E.4. 17. per Catesby. 9 E.4. 26. lib. 7. fo. 7, 8.

See the Second part of the Inſtitutes, Confirmat. Cart. cap. 5. ubi ſupra.

Vide Paſch. 16 E.2. Phelip Maſter del Hoſpit. de S. Katherins caſe, in libro meo fo. 83. b.

CAP. XXVII.

Of Felony to marry a ſecond husband or wife, the former husband or wife living.

1 Ja.cap.11. IF any perſon or perſons within his Majeſties Dominions of England and Wales, being married do at any time after marry any perſon or perſons, the former husband or wife being alive, that then every ſuch offence ſhall be felony, &c.

This is the firſt Act of Parliament that was made againſt Polygamy. Polygamia eſt plurium ſimul virorum, uxorumve connubium.

The difference between Bygamy, or Trigamy, &c. and Polygamy is, Quia Bigamus ſeu Trigamus, &c. eſt qui diverſis temporibus, & ſucceſſive duas, ſeu tres, &c. uxores habuit. Polygamus, qui duas vel plures ſimul duxit uxores.

¶ If any perſon.] **This Law is generall, and extendeth to all perſons, of what eſtate, or degree ſoever.**

See the 1. part of the Inſtitutes Sect. 104. **If the man be above the age of fourteen, which is his age of conſent, and the woman above the age of twelve, which is her age of conſent, though they be within the age of one and twenty, are within the danger of this law: which appeareth by this, that this Act extendeth not to a former marriage made within the age of conſent, as hereafter ſhall appear.**

¶ Being married, &c.] **This extendeth to a marriage de facto, or voydable by reaſon of a precontract, or of conſanguinity, or of affinity, or the like: for it is a marriage in judgement of law untill it be avoided, and therefore though neither marriage be de jure, yet they are within this ſtatute.**

¶ Doe at any time marry.] **This ſecond marriage is meerly void, and yet it maketh the offender a felon.**

And the party and parties ſo offending, ſhall receive ſuch and the like proceeding, triall, and execution in ſuch County, where ſuch perſon or perſons ſhall be apprehended, as if the offence had been committed in ſuch County, where ſuch perſon or perſons ſhall be taken or apprehended.

See before the expoſition of the ſtatutes of 7 H. 7. and 3 H. 8. concerning departing of ſouldiers, &c.

See 22 E.4. Conſultation. 5. The opinion of the Doctors. Pains caſe lib. 9. fo. 72. **Out of the generality of this law, there be Five exceptions: Firſt, it extendeth not to any perſon or perſons, whoſe husband or wife be continually remaining beyond the ſeas, by the ſpace of ſeven years together. By this branch notice is not materiall, in reſpect of the Commorancy beyond ſea.**

Secondly, it extends not, when the husband or wife ſhall abſent him or her ſelf, the one from the other, by the ſpace of ſeven years in any parts within his Majeſties Dominions, the one of them not knowing the other to be living within that time. Here notice is materiall, in reſpect the Commorance is within the Realm.

Thirdly,

Thirdly, nor to any perſon or perſons, that at the time of ſuch marriage be divorced by any ſentence had in the Eccleſiaſticall Court.

There be two kinds of divorces, the one that diſſolveth the marriage à vinculo matrimonii; as for precontract, conſanguinity, &c. and the other à menſa & thoro; as for adultery, becauſe that divorce by reaſon of adultery, cannot diſſolve the marriage à vinculo matrimonii, for that offence is after the juſt and lawfull marriage. This branch in reſpect of the generality of the words, priviledge the offender from being a felon, as well in the caſe of the divorce à menſa & thoro, as where it is à vinculo matrimonii, and yet in the caſe of the divorce à menſa & thoro, the ſecond marriage is void, living the former wife or husband. And if there be a divorce à vinculo matrimonii, and the adverſe party appeal, which is a continuance of the former marriage, and ſuſpend the ſentence, yet after ſuch a divorce, the party marrying is no felon within this ſtatute, in reſpect of the generality of this branch, although the marriage be not lawfull.

Fourthly, nor to any perſon or perſons, where the former marriage is by ſentence in the Eccleſiaſticall Court declared to be void and of no effect.

Fifthly, nor to any perſon or perſons, for or by reaſon of any former marriage made within age of conſent: Hereby it appeareth that the makers of the law intended that this Act ſhould extend to every perſon above the age of conſent.

If the man be above fourteen, and the wife under twelve, or if the wife be above twelve, and the man under fourteen, yet may the husband or wife ſo above the age of conſent, diſagree to the eſpouſals, as well as the party that is under the age of conſent; for the advantage of diſagreement muſt be reciprocall. And ſo it was reſolved by the Judges and Civilians, Trin. 42 Eliz. in the Kings Bench, in a Writ of Error between Babington and Warner. So as if either party be within age of conſent, it is no former marriage within this Act.

Trin. 42 Eliz. Coram reg. Inter Babington & Warner.

The offender againſt this ſtatute may have the benefit of his Clergy.

If he be a Nobleman and Lord of Parliament, he ſhall be tried by his Peers, albeit there be no proviſion ſpecial for it: for of common right, (that we may ſay it once for all) in caſe of treaſon, felony, and miſpriſion of treaſon or of felony (as hath been ſaid before) he is to be tried by his Peers.

I find that by the ancient law of England, that if any Chriſtian man did marry with a woman that was a Jew, or a Chriſtian woman that married with a Jew, it was felony, and the party ſo offending ſhould be burnt alive.

Marriage in ſome ſort felony by the Common law.

Contrahentes cum Iudæis, Iudæabus, Pecorantes, & Sodomitæ in terra vivi confodiantur, &c. Fleta lib. 1. cap. 35. §. Contrahentes.

CAP.

CAP. XXVIII.

Of Felony for any having a Plague ſore upon him, contrary to commandment goeth abroad, &c.

1 Jac.cap.31. IF any perſon infected with the plague, commanded (by ſuch perſons as are appointed by the Act) to keep houſe, ſhall contrary to ſuch commandement wilfully and contemptuouſly goe abroad, and ſhall converſe in company, having any infectious ſore upon him uncured, ſuch perſon ſhall be adjudged a felon.

Levit.cap.13. Numb.cap.5. Regiſt. F.N.B. 234. Breve de Leproſo amovendo Bract.lib.5. f.421.a Brit.fo.39.88. Flet.li.6. cap.39. 22 E.3. Rot. Clauſ. 2. parte nu. 14. This is felony, albeit no other perſon by ſuch means be infected, for this ſtatute was made to prevent the moſt horrid and fearfull infection of the plague. The law was generall, and extended to all eſtates and degrees whatſoever, and was grounded upon the law of God: and the reaſon of the law of the Realm is; that the infectious ſick ſhould be removed from the whole. The party offending might have had the benefit of his Clergy.

Here is a rare Proviſo, That no attainder of felony by vertue of this Act, ſhall extend to any attainder, or corruption of blood, or forfeiture of goods, chattels, lands, tenements, or hereditaments.

In this Proviſo theſe things are to be obſerved: Firſt, that by the avoyding of the corruption of blood, the wives dower is impliedly ſaved: for where the heir ſhall inherit, the wife ſhall be endowed againſt the heir. Secondly, that there ſhall be * no forfeiture of goods, or chattels, which is rare, and the like we have not obſerved before, and by conſequent the offender may make his Will and Teſtament, and if he doe not, the Ordinary ought to grant adminiſtration of the goods and chattels, as he ought to do in other caſes.

* Nota.

Theſe words [to any attainder or] muſt be omitted, and the ſenſe to be, to any corruption of blood, for (as it is printed) it is, that no attainder of felony ſhall extend to any attainder, &c.

This Act is become of no force for want of continuance, and is expired ſince we wrote this Chapter, therefore to be put out of the charge of the Juſtices of Peace.

CAP.

CAP. XXIX.

Of Felony in Jaylers by dures of Impriſonment, &c. by ſtatute, and by the Common law.

IF it happen that the keeper of the priſon, or underkeeper by too great dures of impriſonment, and by pain make any priſoner that he hath in his ward to become an * Appellor, againſt his will, and thereof be attainted, he ſhall have judgement of life and member.

14 E.3.cap.10. Geol in French is a priſon. Geolier a keeper of a priſon. Anglice, a Jayl, or Jayler.

* An Approver.

3 E.3.Cor.295.

Before the making of this ſtatute, if a Jayler had by dures of impriſonment made his priſoner become an Approver, to appeal honeſt men for his own private, of intent to have of their goods, when they were committed to his cuſtody, and to retain them in priſon without being let to mainprize; and the Appellees upon his appeal be hanged: this is felony in the Jayler by the Common law: but if the appellees were acquitted, then it was no felony, but a great miſpriſion in the Jayler, which was one of the cauſes of the making of this Act: for by this Act, if the priſoner become an Approver againſt his will, whether the Appellees be acquited, or attainted, or after the approvement not proceeded with, and whether the approvement be true or falſe, ſo it be by dures of imprisonment, and againſt the will of the priſoner, it is Felony. * For it is not lawfull for any man to excite or ſtir any other to a juſt accuſation, complaint or lawfull ſuit, for Culpa eſt ſe immiſcere rei ad ſe non pertinenti; (and ſo was it reſolved Mich. 7. Ja. in the Starchamber, in Sir John Hollis his caſe, by the whole Court) much more to doe it by dures of imprisonment, moſt of all by a Jayler, who hath the cuſtody of the priſoner committed to him, to enforce him by dures to become an Approver. And therefore this law hath made it felony in the Jayler or Under-jayler.

18 E.3. Cor.272.

* 1 E.3.cap.14. 20 E.3.cap.5. 1 R.2.cap.4. W.1.cap.36. 11 H.4. 2.91. 22 E.3.15. See the expoſition of W.1.c.28.

a Mich. 7 Jacobi in Curia ſtellar. Sir John Hollis caſe.

¶ Keeper of the priſon, or Under-keeper.] If he be Keeper, or Underkeeper, de jure, or de facto, by right or by wrong, he is within the Purview of this ſtatute.

11 H.4.73. ſimile 13 E.3.bar.253. ſimile.

¶ By too great dures of impriſonment.] Every imprisonment is taken and deemed in Law duritia, dures: a little addition to it by the Jayler is too great dures in this caſe.

¶ To become an Appellor.] That is, an Approver.

¶ Againſt his will.] That is, when the priſoner never would have done it of his own will, if the Jayler, or Under-jayler had not enforced him thereunto.

* W.2.cap.34. 28 E.3.cap.3. 13 R.2. ſtat.2. cap.3.

¶ Judgement of life or member.] * Theſe words doe imply felony. For this offence, the offender ſhall have the benefit of his Clergy.

1 E.2. De frang. priſonam. 9 E.4. fo.26. Br. Cor.203.

b If the Jayler keep the priſoner more ſtraightly then he ought of right, whereof the Priſoner dyeth this is felony in the Jayler by the Common law. And this is the cauſe, (as before hath been ſaid) that if a priſoner die in priſon, the Coroner ought to ſit upon him. See before Cap. Petit Treaſon fo.34. how priſoners are to be demeaned.

b Britton fo.18. Fleta lib.1.c.26. Verſus finem. Mirror cap.1. §.9. De homicidio.

How

How Gaoles are rejoyned and united to the office of Sheriffs, see this statute of 14 E. 3. cap. 10. 19 H. 7. cap. 10. Lib. 4. fo. 34. Muttons case. Adde thereunto Rot. Parl. 18 E. 3. nu. 43. and so was it decreed in Forteſcues case, in the Exchequer chamber, Anno 2. Car. Regis.

14 E. 3. cap. 10. 19 H. 7. cap. 10. Lib. 4. fo. 34. Muttons case. Parl. 18 E. 3. nu. 43. 2 Car. Regis in the Exchequer Chamber. Forteſcues case.

CAP. XXX.

Of Felony by bringing in, payment, or receipt of certain money.

IT is felony to make, coyn, buy, or bring in, and put in payment, &c. any Galley half pence, Suskyn, or Dotkyn.

3 H. 5. cap 1. Stat. 1. Raſt. Abb. Tit. money nu. 37.

The reaſon of this law was, for that theſe moneys were baſe, and not of the Allay of Sterling, which was (amongſt others) the cauſe of the making of the generall law of 9 H. 5. cap. 6. Stat. 2.

9 H. 5. c. 6. Stat. 2.

It is felony to pay, or receive for payment any money called Blanks. For the better underſtanding of this ſtatute, it is to be known, that theſe Blanks were white money coyned by King H. 5. in France after his victory at Agincourt, and league with France, whoſe ſtyle then was, Rex Angliæ, Regens & hæres Franciæ. And they were called Blanks or Whytes in reſpect of the colour, becauſe at the ſame time he coyned alſo a Salus in gold, the Salus, being of the value of twenty two ſhillings, was of the allay of ſterling: but the Blanks, which were much more common, being each of them valued at eight pence, were not of the allay of ſterling, and therefore they onely were decried by the ſaid Act of 2 H. 6.

2 H. 6. cap. 9.

See the Second part of the Inſtitutes. Artic. ſuper Cartas cap. 26.

For either of theſe offences of felony the offender may have his Clergy.

CAP. XXXI.

Of felony for tranſportation of Silver, or importation of falſe or evill money, &c.

Defendue fuit que nul Argent ſerra tranſport hors del Realm.

This was the ancient law of England long before the Conqueſt.

Mirror c. 1. §. 3. Inter les Articles de viels roys ordeins.

At the Parliament holden Anno 17 E. 3. as well the tranſportation of ſilver, as the importation of falſe and evill money, is enacted by authority of that Parliament to be Felony. And alſo if the ſearchers mentioned in the Act be aſſenting to the bringing in of falſe money, or willingly ſuffering ſilver or money to be tranſported, it is alſo made Felony. But becauſe this Act was never printed nor tranſlated into Engliſh, and for that there be other things obſervable, enacted thereby, worthy to be known, we will tranſcribe the ſame, de verbo in verbum in proprio Idiomate.

Rot. Parl. 17 E. 3. nu. 15. not printed

Le

Le Parliament tenus a Weſtm. a la Quinzeme de Paſch. du raign noſtre Seignior Le Roy Edward Tiers apres le Conqueſt Dys & ſeptiſme.

ITem accorde eſt de faire une Monoie des bones Eſterlings en Engleterre du Pois & del [a] *Alay del auncient Eſterling, que avera ſon cours en Engleterre entre les Grandz & la Comune de la terre, & la quele ne ſerra portes hors du royalme dengleterre en nulle manere, ne pur quecunque cauſe que ceo ſoit. Et en caſe que les Flemings voillent faire bone monoie dargent groſſes ou autres accordant en alay es bones eſterlings, que tiel monoie eit cours en Engleterre entre Merchand & Merchand & autres qi la vodroient reſceuire de lour bone gree, iſſint que nul argent ſoit portes hors due Roialme.*

Item eſt accordes & aſſentus, que bones gents & loialx ſoient aſſignes es Ports de miere, & alours, ou mieſter ſerra, de faire la ſerche que nul argent ſoit portes hors due Roialme en monoie n'autrement, forſpris que les Grandz quant ils vont per dela qils penſent aver veſſeals dargent pur ſervir lour hoſtels: Et que nul ſoit cy hardy [b] *de porter fauſſe & malvois monoie en Roialme, ſur paine de forfeiture de vie & de membre, & a faire eſchanges a ceux qi paſſeront la miere d'or pur lour bones Eſterlings a la value.*

Item aſſentus eſt & accordes, que les dits Sercheours, per cauſe qils ferront lour offices plus diliagement & plus loialment, [c] *ils eient la tierce partie de tote la fauxe monoie, qils purront trover portee deins le Roialm a lour proffit demeen: Et en meſme la manere eient la tierce partie de la bone monoie quele ilz troveront en la miere paſſent hors de la terre. Et en caſe qils ſoient troves negligents ou rebealx a tieux ſerches faire,* [d] *que lour terres & tenements, biens & chateux ſoient ſeiſes en la main le Roy, & lour corps pris, & detenus tanque ils eient fait fine au Roy pur lour diſobeiſance. Et en caſe quils ſoient* [e] *aſſentants de porter tiels fauxe monoie, & de ſuffrire ſachantement largent ou monoie autrement, (forſpris ques les Grandz quant ilz vont per dela qils penſent aver veſſeals dargent pur ſervir lour hoſtels come de ſuis eſt dit) eſtre meſnes hors du Roialm, eient judgement de vie & de membre.*

a See Britton c. 5. to. 10. b. Ceſt allay eſt ſolonque le forme & uſage del Realm. Mirror cap. 1. §. 3. before the Conqueſt. & cap. 1. §. 6. & cap. 5 §. 1. See inter leges Æthelſtani c. 14. Canuti cap. 8. Fleta lib. 1. c. 22. Glanv. li. 14. c. 7. Of what weight and allay the Kings money ſhall be. 25 E. 3. ca. 13. 9 H. 5. ca. 11. See before cap. Treaſon. Verb. *Sa monye.* See the ſecond part of the Inſtitutes. Artic. ſuper Cartas cap. 20.

b This is felony. See the like in the ſecond part of the Inſtitutes. 1 E. 2. De frangentibus priſonam. 14 E. 3. 10, &c.

c The reward of the Searchers if they be diligent, &c.

d The puniſhment of them if they be negligent, &c.

e Their aſſent to the bringing in of falſe money, or wittingly to ſuffer ſilver, or money, &c. to be tranſported, is Felony.

Item, IT is accorded to make money of good Sterling in England of the Weight and Allay of the aucient Sterling, which ſhall be currant in England between the Great men and Commons of the Land, and the which ſhall not be carried out of the Realm of England in any manner, nor for any cauſe whatſoever. And in caſe, that the Flemings will make good money of ſilver groſſe or other, according, in

allay of good ſterling, that ſuch money ſhall be currant in England between Merchant and Merchant, and others, who of their own accord will receive the ſame, ſo that no ſilver be carried out of the Realm.

Item, It is accorded and aſſented, That good and lawfull men be aſſigned in the Ports of the ſea, and elſewhere, where need ſhall be, to make ſearch, that no ſilver be carried out of the Realm in money or otherwiſe, (except that the Great men may when they go out of the Realm, have ſilver veſſels to ſerve their houſes) And that none be ſo hardy to bring falſe and ill money into the Realm upon pain of forfeiture of life and member, and to make exchanges with them, that ſhall paſſe the ſea, of gold for their good ſterling to the value.

Item, It is aſſented and accorded, that the ſaid Searchers, becauſe they may do their offices more diligently and more lawfully, ſhall have the third part of all the falſe money that they can finde to be brought into the Realm for their own benefit; And in the ſame manner they ſhall have the third part of the good money which they ſhall find upon the ſea paſſing out of the Realm. And in caſe they ſhall be found negligent or diſobedient in making ſuch ſearches, that their lands and tenements, goods and chattels ſhall be ſeiſed into the Kings hands, and their bodies taken and detained untill they have made fine to the King for their diſobedience. And in caſe they ſhall be aſſenting to the bringing in of ſuch falſe money, or wittingly ſhall ſuffer ſilver or money (except veſſels of ſilver for the Great men when they go out of the Kingdome to ſerve in their houſes, as before is ſaid) to be tranſported out of the Realm, they ſhall have Judgement of life and member.

The offenders in caſe of felony made by this Act may have the benefit of their Clergy.

CAP.

CAP. XXXII.

Of Felony for carrying of VVooll, VVoolfels, Leather, or Leade out of the Realme.

NO Merchant, Engliſh, Welch, or Iriſh, ſhall carry any manner of Wools, Leather, Woolfels, or Lead, out of the ſaid Realme and Lands, upon pain of forfeiture of life and member, nor ſhall tranſport any of the ſaid wares or Merchandizes in the name of Merchant ſtrangers, nor ſhall ſend or hold their ſervants, &c. in the parts beyond the ſea to ſurvey the ſale of the ſaid wares or merchandizes, or to receive the money comming of the ſale of the ſame, nor take payment of gold or ſilver, nor of any other thing in recompence or commutation, or in the name of payment in the parts beyond the ſea out of the Realm and lands aboveſaid of merchandizes ſold in England, Ireland, or Wales, touching the Staple, but that all ſuch payment ſhall be made in gold or ſilver, or merchandizes in England, Ireland, or Wales, where the contract was made, upon pain of life and member.

27 E.3.cap.3. the ſtatute of the Staple.

Mirror cap.1. §.3. Inter les artic. per vieles royes ordeins. Defendu que nul ne ameſnaſt leyne hors del realme.

That no Merchant privy nor ſtranger, nor any other, of what condition that he be, go by land or by water towards wines, or other wares or merchandizes comming into our ſaid Realm or Lands, in the Sea, nor elſewhere, to foreſtall or buy the ſame, or in other manner to give earneſt upon them, before that they come to the Staple, or to the Port where they ſhall be diſcharged; nor enter into the ſhips for ſuch cauſe, till the merchandizes be ſet to land to be ſold, upon pain of loſſe of life and member. Cap.11.

No Merchant privy, ſtranger, or other ſhall carry out of our Realm of England, Wools, Leather, or Woolfels to Barwick upon Twede, nor elſewhere, nor into Scotland upon the like pain, nor that any Merchant, nor any other ſell his Wools, Woolfels, or Leather, to any of Scotland, nor to any other to carry into Scotland, upon the like pain. Cap.12.

If the Merchants or other people of Ireland or Wales, after they be in the ſea with their merchandizes, do paſſe to any place, other then to the Staples in England: it is felony. Cap.18.

No Merchant, or other ſhall make any conſpiracy, confederacy, &c. or ill device in any point, that may turn to the impeachment, diſturbance, defeating, or decay of the Staples, &c. and if any do, and be thereof attainted before the Major and Miniſters of the Staple, or other whom the King ſhall aſſign, he ſhall incurre the pain of loſſe of life and member. Cap.25.

Item, *ou auterfoitz fuit orden en* leſtatuts de Leſtaple que nul Englois paſſera la mere ove leynes, quire, pealtz lanuts, ne per auter, ſur peine de forfeiture de vie & member, terres & tenements, biens & chateux: Eſt accord que la forfeiture de vie & member ſoit ouſte de tout en leſtatute de Leſta-*

38 E.3.cap.6. 27 E.3.ca.3, &c. ſtat. Stapulæ.

ple, & que nul home ſoit impeach per tiel forfeiture de vie & membre, cibien in temps paſſe come avenir, la forfeiture des terres & tenements, biens & chateux eſteant en ſa force. The ſame in Engliſh.

Alſo where heretofore it was ordained in the ſtatutes of the Staple, that no Engliſh man ſhould paſſe the Sea with Wools, Leather, Woolfels, nor by other, upon pain of forfeiture of life and member, lands and tenements, goods and chattels. It is accorded that the forfeiture of life and member be ouſted in the whole in the ſtatute of the Staple, and that no man be impeached by ſuch forfeiture of life and member, as well in times paſt, as to come, the forfeiture of the lands and tenements, goods and chattels, being in his force.

By the expreſſe letter of the body of this Law, the forfeiture of life and member is ouſted de tout in the ſtatute: therefore it is holden, that the felony is taken away throughout the ſtatute, but the forfeiture of lands and goods remaineth by the expreſſe letter of this Act.

18 H.6.cap.15. Stanf. Pl. Cor. 3. b.

By the Statute of 18 H. 6. No man ſhall carry Wooll, or Woolfels, out of this Realm to other places, then to the Staple at *Callice*, without the Kings licenſe, upon pain of felony, &c. And that as well Commiſſioners aſſigned, as the Juſtices in every County where ſuch Wools and Woolfels ſhall be ſo carried out, have power and authority to enquire of the premiſes, and them to hear and determine, &c.

But this Act extendeth not to Wools which ſhall paſſe the ſtraits of Marroke. And this is a perpetuall law, and cannot be expired, as it is ſuppoſed in the laſt impreſſion of the ſtatutes at large, but it extendeth only to Wools and Woolfels. The offender herein may have his Clergy.

And for the better underſtanding of ancient Statutes and Records concerning Wools, it is neceſſary to explain certain words and terms. By the ſtatute of 25 E.3.cap.9. A ſack of wooll contains but twenty ſix ſtone, and every ſtone fourteen pound, where before it was [a] twenty eight ſtone.

[a] Compoſ. de ponderibus vet. Mag. Carta, 2 part. fo. 31. Saccus lanæ. Rot. Parl. 27 E. 3. nu. 53.

Pochet of Wooll, unde Pochettum, that is, a little poke or ſack containing half a ſack of wooll. Sarpler, unde Sarpleia, is alſo half a ſack, and is derived from the French word Sarpillier, which ſignifieth a Wrapper, within which wrapper half a Sack is contained.

[b] A Weigh of wooll, unde Waga, is half a ſack.

[b] Compoſit. de ponderibus, ubi ſupra.

A Tod or Toit of wooll, unde Toddum lanæ, containeth two ſtone, and is derived from the French word Toilet, which is a Wrapper, within which by uſage two ſtone of wooll is foulded: ſome fetch it from the Flemmiſh word Dodderem, which ſignifieth nectere, to weave, becauſe it is woven into cloth. Petralanæ is a Stone of wooll, ſo called, becauſe the Weight, being a ſtone, contains fourteen pound.

CAP.

CAP. XXXIII.

Againſt tranſportation of Iron, Braſſe, Copper, Latten, Bell-metall, Pan-metall, Gun-metall, or Shroofe-metall, (Tinne and Lead onely excepted.)

The tranſportation of theſe are prohibited by divers Acts of Parliament upon the penalties therein expreſſed. And hereby is prohibited the tranſportation of any Gunnes whatſoever: a neceſſary law, and worthy of due execution. 28 E.3.cap.5. 33 H.8.cap.7. 2 E.6.cap.37. See the penalties in the Statutes themſelves, which are thought to be too weak.

And we have obſerved, that God hath bleſſed this Realm with things for the defence of the ſame, and maintenance of trade and traffick, that no other part of the Chriſtian world hath the like: viz. Iron to make Gunnes, &c. more ſerviceable and perdurable then any other. Secondly, Timber for the making and repairing of our Navy, and eſpecially for the knees of the ſhips, better then any other. Thirdly,* our Fullers earth is better for the fulling of our cloth then any other. Fourthly, our wooll makes better cloth, and more laſting and defenſible againſt winde and weather, then the wooll in any Nation out of the Kings Dominions; and many other ſpeciall gifts of God. Ferrũ à feriendo. Timber is a Saxon word, in old French, Marem, unde Maremium. Latine, Ligni materia, vel Lignum ædificatorium. * Terra fullonica.

But here will we ſtay, and pray, that none of theſe may be tranſported for many inconveniencies, that will follow thereupon.

CAP. XXXIV.

Of Felony for ſtealing of a Faulcon.

EVery perſon that findeth any Falcon, Tercelet, Lanner, or Laneret, or any other Falcon, that is loſt of his Lords, that forthwith he ſhall bring it to the Sherif of the County, and that the Sherif make proclamation, &c. and if any ſteal any Hawk and the ſame carry away not doing the Ordinance aforeſaid, it ſhall be done of him as of a thief that ſtealeth a horſe or other thing. 37 E.3.cap.19.

The ſtatute of 34 E. 3. inflicted the penalty for the concealing and taking away of the Hawk, two years impriſonment, and the price of the Hawk to the Lord, if he hath wherewith, and if not, he ſhall the longer abide in Priſon. This Act of 37 E.3. maketh the offence Felony. 34 E.3.cap.22.

The new printed book of the Statutes at large, in ſtead of theſe words, (or any other Falcon) hath, or any other Hawk. Printed for the Society of Stationers, 1618.

I have ſeen ſome manuſcripts (in theſe words) in the originall tongue, wherein the ſtatute was publiſhed. Que quecunque perſon que trove Faucon, Tercelet, Lanier, ou Lanyrer, Auſtor ou auter Faucon. And both theſe differ from the truth of this law. For the firſt extendeth this Act to any Hawk whatſoever. And the manuſcript to Auſtor or Autor, a Goſhawk, whereas in truth, this law extendeth onely to ſuch as be of the kinde of Faulcons, being long-winged Hawks, which many times by flying far off are loſt, and not to any ſhort See hereafter, cap. Larceny, verb. Perſonall goods, &c.

ſhort winged Hawk, as the Goſhawk, the Tercel of the Goſhawk, the Spar-hawk, &c. And in the body of the Act this word [Faulcon] is ever uſed, and not this word [Hawk,] as hereafter appeareth. We would have been glad to have cleared this point by the Record of the Parliament Roll, but the Roll of this Act is not to be found, and yet being a generall law, the Judges are to take notice thereof: and that which I have ſet down as the words of the law, agreeth with the firſt impreſſion thereof, and with all ſucceeding impreſſions ſaving the laſt.

Lib. 8. fo. 27, 28. In caſu principis.

¶ Every perſon.] This is a generall law, and extendeth to all perſons of what degree or ſex ſoever.

¶ That findeth.] Note by the Common law the felonious taking of any Hawk long-winged, or ſhort-winged, from the Peark, &c. or from the perſon of any man, with a mind to ſteal her, is robbery: but the finding of a Faulcon, though he concealed, denied, or ſold her, was no felony, but by this Act.

¶ Any Faulcon.] By this and the laſt words, or any other Faulcon, it appeareth that only Faulcons are within this law, as beſides thoſe that are here named, the Gerfaulcon, Girofalco, or Ardearius, and the Tercell, which is called a Jerkyn; and the Lanner is called Falcunculus. But the Peryn, which is called Æſalo, and the Hobby, which is called Alaudaria, though they be long-winged Hawks, yet being not of the kind of Faulcons they are not within this ſtatute, neither is any ſhort-winged Hawk, as the Goſhawk, the Tercell of the Goſhawk, or the Spar-hawk, &c. as hath been ſaid, within this Act.

¶ Tercelet.] This is the Tercell of the Faulcon, called a Tercell gentill, the male of the Faulcon called Terciolus, quia tertia parte minor ſit femella, becauſe the Tercell is a third part leſſe then the female.

¶ Lanner and Laneret.] Theſe (as hath been ſaid) are of the kind of Faulcons, which appeareth not only by the name Falcunculus, but by the words of the Act, for having named the Lanner and Laneret, it is ſaid, or any other Faulcon.

Albeit theſe Hawks, that ſhall be ſo loſt, have no Verbels, yet muſt the finder carry them to the Sherif, for Verbels are not required by this Act. The only thing that the finder is to do, to ſave himſelf from felony, is forthwith (the word in the original is maintenant) after his finding to carry the Hawk to the Sherif.

¶ That is loſt of his Lords.] Lords are taken here for the owners, the word in the originall is Seignior, which ſignifieth as well a Proprietary, as a Lord.

10 E. 4. 1. 7 R. 2. barre 241. Lib. 5 fo. 108. Sir Hen. Conſtaſtables caſe.

¶ To prove reaſonably.] This is not intended according to the generall ſenſe of this word [proof] that is, by a Jury of twelve men, but [reaſonably,] that is, by Verbels, or by marks, or by other proof to the Sherif.

¶ And if any ſteal any Hawk, &c.] The concealing and carrying away of the Hawk, not bringing the ſame to the Sherif according to this Ordinance, is adjudged a ſtealing by this Act. And yet if a man finde goods, and conceal or deny them, it is no felony.

14 El. Dier 307. Fines caſe. Lib. 7. fo. 17. in caſe de Swans.

¶ As of a thief that ſtealeth a horſe.] But yet by the Common law one hath not as good and abſolute a property in Hawks, being feræ naturæ, and reclaimed for delight and pleaſure, (for they may become wild again, and return to their naturall liberty) as in a horſe, or any other thing of profit: but the concealing and carrying away of the Hawk reclaimed, being found

found was no felony before this ſtatute, no more then any thing of profit, becauſe the party came to the Hawk by finding. See more hereof in the Chapter of Larceny. A Hawk that is not reclaimed is nullius in bonis, but occupanti conceditur, and he that firſt getteth the Hawk enjoyeth it.

In this Act four things are to be obſerved. Firſt, that the Sherif muſt make proclamation in all the good towns of the County, that he hath ſuch a Faulcon in keeping. Secondly, if none come to challenge the Falcon within four months, if the finder be under the degree * of a Gentleman (which here is called un ſimple home) the Sherif ſhall have the Falcon, paying reaſonable coſts, &c. Thirdly, if the finder be a Gentleman, and no challenge by the owner within four months, then he ſhall have the Falcon, paying reaſonable coſts, &c. Fourthly, it is to be obſerved, that in theſe two latter branches, the laſt printed book hath this word [Hawk:] but in the originall, and all the other printed books, the word is [Falcon:] under which word, all the reſt mentioned in this Act are included.

For this offence of felony the offender ſhall have the benefit of his Clergy, for at the time of the making of this Act he that had ſtoln a horſe ſhould have had his Clergy. See Stanf. Pl.Coron.fo.37.

* Who ſhall bee accounted in law a Gentleman; See the ſecond part of the Inſtitutes the ſtatute of Additions. 1 H.5. c.5. See before c. 2?. 3 Jac. ca.4. Verb. And that if any Gent.

CAP. XXXV.

Congregations, &c. by Maſons in their generall Chapters, &c.

IT is ordained and eſtabliſhed that no congregations and confederacies ſhall be made by Maſons in their generall Chapters and aſſemblies, whereby the good courſe and effects of the ſtatutes of Labourers are violated and broken, in ſubverſion of law; and if any be they that cauſe ſuch Chapters and congregations to be aſſembled and holden, ſhall be adjudged felons.

3 H.6.cap.1.

The cauſe wherefore this offence was made felony, is, for that the good courſe and effect of the ſtatutes of Labourers were thereby violated and broken. Now all the Statutes concerning Labourers before this Act, and whereunto this Act doth refer, are repealed by the ſtatute of 5 Eliz. cap. 4. whereby the cauſe and end of the making of this Act is taken away, and conſequently this Act is become of no force or effect: for ceſſante ratione legis, ceſſat ipſa lex. And the indictment of felony upon this ſtatute muſt contain, that thoſe Chapters and Congregations were to the violating and breaking of the good courſe and effect of thoſe ſtatutes of Labourers, which now cannot be ſo alledged, becauſe thoſe ſtatutes be repealed. Therefore this would be put out of the charge of Juſtices of Peace written by * Maſter Lambard.

23 E.3. de ſervientibus ca. 1,&c. 25 E.3. De ſervientibus c.1,&c. 5 El.cap.4.

Ceſſante cauſa ſeu ratione legis ceſſat ipſa lex. 14 H.7.11. Per Fineux ſimile 27 H. 8. 4.b. Stanf. 37. b.

Aide, ſimile 10 E.3. 8. Account per Shard. 26 H. 6. Examination 14. * Lambard pag.227. Vide

CAP.

CAP. XXXVI.

Of Felony by bringing in of Buls of Excommunication,&c.

13 R.2.Stat.2. cap.3.

IF any man bring or ſend into this Realm, or the Kings power, any Summons, Sentence, or Excommunication againſt any perſon of what condition that he be, for the cauſe of making motion, aſſent, or execution of the ſtatute of Proviſors, he ſhall be taken, arreſted and put in priſon, and forfeit all his lands and tenements, goods and chattels for ever, and incur the pain of life and member. And if any Prelate make execution of ſuch Summons, Sentence, or Excommunication, that his Temporalties be taken, and abide in the Kings hand till due redreſſe and correction be thereof made. And if any perſon of leſſe eſtate then a Prelate,&c. make ſuch execution, he ſhall be taken, arreſted, and put in priſon, and have impriſonment, and make fine and ranſome at the diſcretion by the Kings Cnuncell.

By the Common law, when any perſon, either Eccleſiaſticall or Temporall, ſhould by pretext of Forain power impugne or attempt to fruſtrate any of the laws of the Realm, there lieth a Writ called Ad jura regia: **if it were by an Eccleſiaſticall perſon beneficed within this Realm, then the Writ is,**

Regiſt.fo.61,b. Rex,&c. Salutem. Turbamur, nec immerito, & movemur dum illos qui ſub noſtro degunt dominio, & ibidem beneficiis & redditibus honorantur, quo prætextu in defenſione, & tuitione jurium Regiæ Coronæ noſtræ ipſos pos aſſiſtere condeceret, eadem jura erectis contra nos cervicibus conſpicimus ſatagentes pro viribus impugnare,&c.

The generall Writ is, Rex,&c. Ad jura Coronæ noſtræ integra & illæſa pro viribus conſervanda, eo amplius curam & operam adhibere nos convenit ſtudioſam, quòd ad hoc ex debito aſtringimur vinculo juramenti, & alios conſpicimus,ad iplorum jurium enervationem anhelare: **and particularly againſt Proviſions. So as Proviſions,&c. were, as by theſe Writs it appeareth, againſt the Common law of the Realm. but ſufficient puniſhment was not thereby inflicted; therefore this, and other ſtatutes were made.**

Ibidem 60.b. Ibid.61.b. & 62.

And here it is worthy of conſideration, how the laws of England are not derived from any forain law, either Canon, Civil, or other, but a ſpeciall law appropriated to this Kingdom, and moſt accommodate and apt for the good government thereof, under which it hath wonderfully flouriſhed. when this law hath been put in due execution: and therefore as by ſituation, ſo by law it is truly ſaid,

* Diſ-ſos } orbe & legibus.

Et penitus toto * diviſos orbe Britannos.

¶ If any man.] **Though theſe words be generall, yet they extend not to Eccleſiaſticall perſons, becauſe there is ſpeciall proviſion for them after in the Act.**

¶ Any Sommons, Sentence, or Excommunication.] **Hereby are prohibited the Popes Buls of any ſentence or excommunication, &c. and proces of Sommons.**

It appeareth by our Books that the bringing of any Bull of Excommunication into the Realm against a subject, was against the Common Law of England, in respect it gave way to forain authority. And so it was holden in the time of E. 1. and E. 3, &c. long before this Act, and ever since.

11 E. 3. Certif. 6. 30 Ass. p. 5. 19 E. 3. Quare non admisit. 7. Brook. Premunire 10. 11 H. 4. 69. 76. 14 H. 4. 14. 7 E. 4. 14. 20 H. 6. 1. 35 H. 6. 42. F. N. B. 64. f.

¶ Or execution of the said statute of Provisors.] viz. 25 E. 3. de Provisoribus. See 25 E. 3. cap. 22. 27 E. 3. cap. 1. 38 E. 3. stat. 2. cap. 1. & 4.

¶ Incurre the pain of life and member.] That is, of felony, as hath been often said before. This punishment is altered by the statute of 13 Eliz. cap. 2. as hereafter in this Chapter shall appear.

Lib. 5. fo. 19. in Candries case. a W. 2. cap. 24. 1 E. 2. de Frang. prisonam. 28 E. 3. cap. 3. 13 R. 2. stat. 2. c. 3. 9 E. 4. 26. Br. cor. 203.

¶ And if any Prelate make execution, &c.] This and the next following branch extend to Ecclesiasticall persons. The punishment in both these branches, and in the former also is altered by the statute of 13 Eliz. cap. 2. For thereby this offence is made High Treason, [b] as well in persons Ecclesiasticall, as temporall: which Act, and the cause of the making thereof you may reade in the case De Jure Regis Ecclesiastico, ubi supra.

[b] Lib. 5. fo. 35, 36, &c. De jure Regis Eccles.

CAP. XXXVII.

Of Felony in receiving a Iesuite, Seminary Priest, &c.

EVery person which shall wittingly and willingly receive, relieve, comfort, or maintain any Jesuite, Seminary Priest, or other Priest, Deacon, or Religious, or Ecclesiasticall person (made by authority from the See of Rome since the Feast of Saint *John Baptist*, An. 1 *Eliz.* born within this Realm) being at liberty and out of hold, knowing him to be a Jesuite, &c. shall for such offence be adjudged a felon without benefit of Clergy.

27 Eliz. cap. 2.

Clergy taken away.

The cause of the making of this statute of 27 Eliz. against Jesuits and Seminary Priests, &c. and their receivers, you may reade at large, Lib. 5. fol. 38, 39. in the case De jure Regis Ecclesiastico.

CAP. XXXVIII.

Of Felony in Recuſants concerning Abjuration.

35 Eliz. cap. 1.

IF any Recuſant (other then a Popiſh Recuſant or a Feme Covert) which by the tenor and intent of this Act is to be abjured, ſhall refuſe to make abjuration, or after ſuch abjuration made ſhall not goe to ſuch haven, and within ſuch time, as is by this Act appointed, and from thence depart out of the Realm, according to this preſent Act, or after his departure ſhall return into any of her Majeſties Realmes or Dominions, without her Majeſties ſpeciall licenſe in that behalf firſt obtained; that then every ſuch perſon ſo offending, ſhall be adjudged a Felon.

If any offender againſt this Act before he or they be required to make abjuration, repair to ſome Parish Church on ſome Sunday or Feſtivall day, and then and there hear Divine Service, and make ſuch ſubmiſſion as by the Act is preſcribed: then the ſaid offender is clearly to be diſcharged.

The offender ſhall forfeit his goods and chattels, and his lands during his life only, the offence ſhall work no leſſe of dower or corruption of blood, and the heir to inherit. The offender ſhall not have the benefit of his Clergy.

CAP. XXXIX.

Of Felony in Egyptians, &c.

1 & 2 Ph. & Mar. cap. 4.
5 Eliz. cap. 20.

IF any outlandiſh people, calling themſelves, or being called Egyptians, ſhall remain in this Realm, or in Wales, one moneth, at one or ſeverall times: and if any perſon being fourteen years old, which hath been ſeen or found in the fellowſhip of ſuch Egyptians, or which hath diſguiſed him or her ſelf like to them, ſhall remain here or in Wales by the ſpace of one moneth, either at one or ſeverall times, it is Felony.

The offender ſhall not have the benefit of his Clergy.

CAP.

CAP. XL.

Of Felony in dangerous Rogues.

IF any dangerous Rogue that was baniſhed the Realm or adjudged perpetually to the Gallies, have returned into the Realm without lawfull licenſe or warrant, it is felony: the felony to be tried where the offender is apprehended. 39 Eliz. cap. 4. 1 Jac. cap. 7. 25.

The offender may have the benefit of his Clergy.

If any Rogue after he hath been branded in open Seſſions with a Roman R. upon the left ſhoulder, or ſent to the place of his dwelling where he laſt dwelt by the ſpace of a year, or the place of his birth, to be placed in labour, have offended again in begging, or wandring contrary to the ſaid Statutes, it is felony, to be tried in the County where the offender ſhall be taken. 39 Eliz. cap. 4. 1 Jac. cap. 7.

The offender againſt this branch ſhall not have the benefit of his Clergy.

Mendicus non erit inter vos, There ſhall be no begger among you. Deut. ca. 15. v. 4.

Ordeine fuit que les povres fuiſſent ſuſteinus per les Parſons, Rectors, & les Parochians cy que nul ne moruſt per default de ſuſteinance. Mirr. cap. 1. §. 3. Inter les Art. per viels Royes ordeins.

See an ancient Ordinance in 50 E. 3. concerning Ribands and ſturdy Beggers, that they be driven to their occupations or ſervices, or to the place from whence they came. Rot. Par. 50 E. 3. nu. 61. Brit. 49. b.

CAP. XLI.

Of Felony by Forgery in the ſecond Degree.

IF any perſon or perſons being once condemned of any of the forgeries mentioned in the Act. ſhall after ſuch his, or their condemnation, eft-ſoons commit or perpetrate any of the ſaid offences in form in the ſaid Act mentioned, that then every ſuch ſecond offence ſhall be adjudged felony. But no attainder of this felony ſhall extend to take away Dower, nor to corruption of blood, or diſherſon of the heire. 5 Eliz. cap. 14.

In 43 Eliz. Markham was attainted of felony upon this branch in the Kings Bench for a ſecond forgery of many of the Manners and lands late of Sir Thomas Greſham Knight, and was executed thereſore. Markhams caſe coram Rege. 43 Eliz.

* This felony is to be heard and determined before Juſtices of Oier and Terminer, and Juſtices of Aſſize in their Circuit. And albeit that Juſtices of Peace have power to hear and determine felonies, treſpaſſe, &c. yet are they not included under the name of Juſtices of Oier and Terminer: for Juſtices of Oier and Terminer are known by one diſtinct name, and Juſtices of Peace by another. But the Juſtices of the Kings Bench are Juſtices of Oier and Terminer within this Statute. Hil. 30 Eliz. coram Rege. Lib. 9. fo. 118. b. Smiths caſe. 3 Mar. Br. tit. Oier & Term. 8.

The offender ſhall not have the benefit of his Clergy.

See hereafter in the expoſition of this ſtatute for the firſt offence, where incidently there ſhall be more ſaid concerning the ſecond offence.

CAP. XLII.

Of Felony for conveying of any Sheep alive out of the Realm in a ſecond degree.

8 El.cap.3. See the ſtatute of 3 H.6.cap.2.

NO manner of perſon ſhall bring, deliver, ſend, receive, or take, or procure to be brought, delivered, ſent, or received into any ſhip, or bottome, any Rams, Sheep or Lambs, or any other Sheep alive, to be carried and conveyed out of this Realm of England, Wales, or Ireland, or out of any of the Queens Dominions, upon pain that every ſuch perſon, their aiders, abetters, procurers, and comforters, ſhall for his and their firſt offence, forfeit all his goods, and ſuffer impriſonment one whole year without bayl or mainpriſe; and at the years end in ſome market town in the fulneſſe of the market have his left hand cut off, &c. And that every perſon eftſoons offending againſt this ſtatute ſhall be adjudged a Felon, &c.

His left hand cut off.

But this Act ſhall not extend to any corruption of blood, or loſſe of Dower. This felony is to be heard and determined before Juſtices of Oier and Terminer, **Juſtices of Gaol-Delivery, and Juſtices of Peace. And the offender may have the benefit of his Clergy, as well in caſe of the cutting off his hand as in caſe of Felony.** See Stanford 37.b.

CAP. XLIII.

Of Felony in ſervants that imbeſill their Maſters goods after their deceaſe.

33 H.6.cap.1.

IF any of the houſhold ſervants of any perſon ſhall after the deceaſe of their Lord or Maſter violently and riotouſly take and ſpoil the goods which were their ſaid Lords or Maſters, and the ſame diſtribute amongſt them, that upon full information [a] to the Chancelour of England for the time being by the [b] Executors or two of them, of ſuch riot, taking, or ſpoil made, the Chancelour by the advice of the Chief Juſtices, and Chief Baron, or two of them, ſhall have power to make ſo many and ſuch writs to be directed to ſuch Sherifs, as to them ſhall ſeem neceſſary, to make open proclamation in ſuch ſort, as by the Act is preſcribed, to appear in the Kings Bench, &c. and if any ſuch writ be returned, &c. then if the ſaid perſon or perſons make default, then he or they making default ſhall be [c] attainted of felony.

a This extends to the Lord Keeper of the Great ſeal.
b This extends to the Adminiſtrators, and alſo, if there be but one Executor or Adminiſtrator.
c Attainted by force of this Act of Parliament upon default. See the like many

The offenders ſhall have the benefit of their Clergy.

times in the Parliament Rolls. Rot. Parl. 15 H.6. nu.14. & 15. Rot.Parl.18 H. 6. num.28.

CAP.

CAP. XLIV.

Of Felony in ſervants that imbeſill their maſters goods committed to their truſt above forty ſhillings.

EVery ſervant to whom any Caskets, Jewels, money, goods, or Cattels of his or their maſter, or miſtris, ſhall be delivered to keep, that if any ſuch ſervant or ſervants withdraw him or them from their ſaid maſters or miſtreſſes, and goe away with the ſaid Caskets, Jewels, money, goods or cattels, or any part thereof to the intent to ſteal the ſame, contrary to the truſt and confidence in him or them put, &c. Or elſe being in ſervice of his ſaid maſter or miſtris, without the aſſent and commandement of his maſter or miſtris, imbeſill the ſame or any part thereof, or otherwiſe convert the ſame to his own uſe, with like purpoſe to ſteal it: If the Caskets, Jewels, money, goods or cattels be of the value of forty ſhillings or above, ſhall be deemed and adjudged Felony. 21 H.8.ca.7. 27 H.8.ca.17. 28 H.8. ca.2. 1 E.6.ca.12. 5 El.ca.10.

Concerning the value, (to ſpeak it once for all) Tantum bona valent, quantum vendi poſſunt.

This Act extendeth not to any Apprentice or Apprentices, nor to any ſervant within the age of eighteen years, at the time of the offence committed.

Vide Dier 25 H.8.fol.5. Dier 25 H.8. f.5.

By the ſtatute of 27 H.8. the offender was ouſted of his Clergy, but that Act is repealed by 1 E.6.cap.12. So as at this day the offender may have the benefit of his Clergy. 1 E.6.ca.12.

¶ Shall be delivered by his or their maſter or miſtris.] **If the maſter deliver an obligation to his ſervant to receive the money thereby due, and the ſervant receive the money of the obliged, and goeth away with the ſame with intent to ſteal the ſame, this is no offence within this ſtatute, becauſe he had not the money of the delivery of his maſter: and if he had gone with the obligation with intent,** ut ſupra, **it had been alſo out of this Act, becauſe it was a choſe in Action. So if the maſter deliver to his ſervant wares or merchandizes to ſell, and ſelleth the ſame and goeth away with the money as before, this is no offence within this ſtatute for the cauſe aforeſaid. See** Stanford 37.b. Dier 26 H. 8. fo.5.a. & b. See the form of the Indictment upon this ſtat. Lamb. Inter Præſidentes.

CAP.

CAP. XLV.

Of Felony to cut down or break up the Powdike in Marſhland in Norff.

22 H.8.ca.11. 2 & 3 Ph.& Mar. cap.19.

EVery perverſe and malitious cutting down and breaking up of any part of the new Dike called the Powdike in Marſhland in the County of Norff. or of the broken Dike called Oldfield Dike by Marſhland in the Iſle of Ely in the County of Cambridge, or of any other Bank being parcell of the Rinde, and uttermoſt part of the ſaid Country, is adjudged Felony.

The Juſtices of Peace have power to enquire of, and to hear and determine this felony. The offender may have the benefit of his Clergy.

Some ſay that this is a private Act, but it is publicum in privato, for the danger is publike, though the place be private, and doth concern multitudes of people, and the Sea is ſuch an immenſe creature, as who can withſtand it without length of time, infinite dammage and loſſe, and extream charge and coſt?

43 El.cap.13. * See before cap.12. fo.61,62. 3 H.7.cap.2. Vide 1 H.5.c.6. ſimile de Gales. * Black mail is explained by the Act it ſelf.

See the ſtatute of 43 El. cap. 13. whereby in the Counties of Cumberland, Northumberland, Weſtmerland, and the B. of Dureſme * carrying away or detaining of any perſon againſt his will, or impriſoning him or them to ranſome them or to ſpoil them, upon deadly feud or otherwiſe, or ſhall receive or carry * Black mail, or give Black mail for protection, &c. is made felony without benefit of Clergy.

CAP. XLVI.

Of one of the Grand Enqueſt being one of the Indictors of any perſon or perſons of treaſon or felony, and diſcover openly what perſons were ſo indicted, &c.

Stanf. fo.36.2.

THis by ſome opinion in our books was holden for treaſon, or felony, and hereof divers reaſons were yeelded.

Firſt, that ſuch diſcovery was againſt his oath, but that could not be the reaſon, for perjury was neither treaſon nor felony.

Secondly, others did hold, that by this diſcovery the parties indicted of treaſon or felony might flee, or eſcape, but that can be no reaſon; for this diſcovery without more, can neither make him principall nor acceſſory.

38 E.3.Cor.272. 27 Aſſ. p.63. Georges caſe.

Thirdly, others that endeavour to conſeſſe and avoid the Authorities in this caſe in law, are of opinion, that in thoſe times the intent of a man, in criminalibus, was much reſpected, in as much as In criminalibus voluntas reputabatur pro facto, and that by this open diſcovery, &c. his intent appeared, that they might flee or eſcape. And now it is agreed on all parts, that at this

day

day ſuch diſcovery is neither treaſon nor felony: and the rather, for that no perſon ever died for ſuch diſcovery. In Georges caſe, in anno 27 Lib. Aſſ. upon his Indictment he was acquited. But certain it is, that ſuch diſcovery is accompanied with perjury, and a great miſpriſion to be puniſhed by fine and impriſonment.

CAP. XLVII.

Of Larceny or Theft by the Common Law.

Having thus far proceeded, we are now come to Larceny, which commeth from Latrocinium, and from Latrocinie, by contraction, or rather abuſe, to Larceny.

The ſpirit firſt deſcribeth Larceny, and then explaineth it. Larcine eſt priſe d'autre moeble corporelle trecheroufment contre la volunt de celuy a q̄ il eſt p̄ male egaigne de la poſſeſſion, ou del uſe. Then doth he explain and ſhew the reaſon of the principall words thereof. Mirror cap. 1. §. 10. De Larceny.

Priſe eſt dit, car baile neſt my title de laroun, ne livery en le caſe.

Moeble corporelle eſt dit pur ceo q̄ en biens nient moebles, ou nient corporels, ſicome de tre, rents, & des Advowſons de Eſgliſes, ne ſe fait nul larcenie.

Trecheroufment eſt dit pur ceo q̄ ſi leſloignour entende les biens eſtre ſiens, & que il les port bien prender, en tiel caſe ne ſe fait my ceſte peche, nec en caſe ou len prent l'autrui p̄ la ou len entend, que il pleiſt al ſeignior des biens, que il les prendera, mes a ceo covient enſeigner apparant preſumption & evidence.

Et ſeigndum, quod furtum eſt, ſecundum leges, contrectatio rei alienæ fraudulenta, cum animo furandi, invito illo domino, cujus res illa fuerat. And then he alſo explaineth it. Cum animo dico, quia ſine animo furandi non committitur. Bracton cleth not the word latrocinium, but furtum, and ſo doth Glanvile. See Britton a whole Chapter de Larcyns. And Fleta hath it thus, Eſt autem furtum contrectatio rei alienæ fraudulenta, cum animo furandi, invito Dño cujus res illa fuerit, following Bracton totidem verbis. Theſe deſcriptions are generally of Theft, comprehending Robbery, Burglary, when any thing is taken, and all other latrocinies. But here Larceny for diſtinction ſake is taken in a narrower ſenſe, viz. for ſingle theft or thievery, and may be deſcribed thus. Bracton lib. 3. fol. 150. Glanv. lib. 7. c. 17. & lib. 10. cap. 15. Britton cap. 15. de Larcyns. fo. 22. Fleta lib. 1. ca. 36.

Larceny, by the Common law, is the felonious and fraudulent taking and carrying away by any man or woman, of the meer perſonall goods of another, neither from the perſon, nor by night in the houſe of the owner. Larceny defined.

Now let us peruſe the principall parts of this deſcription.

¶ Felonious taking] First it muſt be felonious, id eſt, cum animo furandi, as hath been ſaid. Actus non facit reum, niſi mens ſit rea. And this intent to ſteal muſt be when it commeth to his hands or poſſeſſions; for if he hath the poſſeſſion of it once lawfully, though he hath animum furandi afterward, and carrieth it away, it is no Larceny: but this receiveth ſome diſtinction, as hereafter ſhall appeare. See tit. Piracy, &c. Butlers caſe, 28 Eliz.

Secondly, it muſt be an actuall taking: for an Indictment, Quod felonice abduxit equum, is not good, becauſe it wanteth cepit. By taking, and not bailment or delivery, for that is a receipt, and not a taking: and therewith agreeth Glanvil. Furtum non eſt ubi initium habet detentionis per dominum rei. 2 E. 3. 1. Glanvil lib. 10. cap. 13. 13 E. 4. 9.

But herein the Law doth diſtinguiſh. For if a Wale or Pack of merchandize be delivered to one to carry to a certain place, and he goeth away with the whole pack, this is no felony: but if he open the pack, and take any thing out animo furandi, this is Larceny. Likewiſe if the Carrier carry it to the place appointed, and after take the whole pack animo furandi, this is Larceny alſo: for the deli-

very

very bad taken his effect, and the priority of the bailement is determined. And so it is of a Tun of Wine, or the like, mutatis mutandis.

Charge.

Also there is a diversity between a possession, and a charge; for when I deliver goods to a man, he hath the possession of the goods, and may have an Action of trespasse, or an Appeale, if they be taken or stoln out of his possession. But my Butler or Cook, that in my house hath charge of my Vessell or Plate, hath no possession of them, nor shall have an Action of trespasse or an Appeale, as the Bailee shall: and therefore if they steal the plate or vessell, it is Larceny. And so it is of a Shepheard, for these things be In ohere, & non in possessione Promi, Coci, Pastoris, &c.

3 H.7.12.
21 H.7.15.

13 E.4.9.

If a Taverner set a piece of plate before a man to drink in it, and he carry it away, &c. this is Larceny: for it is no bailement, but a speciall use to a speciall purpose.

Speciall use.

22 Ass.pl.99.
22 E.3.cor.265.

Thirdly, not by Trover or finding. If one lose his goods, and another finde them, though he convert them, animo furandi, to his own use, yet is it no Larceny, for the first taking is lawfull. So if one finde treasure trove, or waife, or stray, and convert them ut supra, it is no Larceny, both in respect of the finding, and also for that Dominus rerum non apparet.

¶ Felonious] implieth, that though the taking be actuall, yet must it be done by such persons as may commit felony. A mad man that is non compos mentis, or an infant that is under the age of discretion, cannot commit Larceny, as in another place we have said.

See cap. de Treason. Verb. quant home, &c. Et cap. Murder.

A Feme covert committeth not Larceny, if it be done by the coertion of her husband; But a Feme covert may commit Larceny, if she doth it without the coertion of her husband: and there it appeareth, that a man may be accessary to his wife, but the wife cannot be accessary to her husband, though she know that he committed Larceny, and relieve him, and discover it not: for by the Law Divine, she is not bound to discover the offence of her husband.

27 Ass.40.
2 E.3.cor.160.
Lex Inæ cap.50. accord.
Stanf.26.c.
15 E.2.Cor.383.

Felons came to the house of Richard Dey, and Margery his wife; the wife knew them to be felons, but the husband did not, and both of them received them, and entertained them, but the wife consented not to the felony. And it was adjudged, that this made not the wife accessary, Quia ipsa in vita mariti sui de aliquo receptamento in præsentia viri sui, cui contradicere non potuit, occasionari non debet.

Mic. 37 E. 3. coram Rege. Rot. 83. Lincoln.

Uxor furi desponsata non tenebitur ex facto viri, quia virum accusare non debet, nec detegere furtum suum, nec feloniam, cum ipsa sui potestatem non habet, sed vir.

Bracton lib. 3. fol. 151, b.

La feme nequedent al felon poitdire q̃ tout scavoit ele del mauvaste son baron, pur ceo ne le poet ele my encuser, ne devoit, tant come ele fuit de luy covert, &c.

Britton cap. 24. fo. 47.

Uxor autem furis non teneatur pro delicto viri, pœna enim suos debet tenere authores, uxor autem virum accusare non debet, nec feloniæ suæ consentire, &c.

Fleta lib. 1. cap. 36.

¶ Felonious and fraudulent taking.] If a man seeing the horse of B. in his pasture, and having a minde to steal him commeth to the Sheriffe, and pretending the horse to be his, obtaineth the horse to be delivered unto him by a Replevin, yet this is a felonious and fraudulent taking, as it was resolved by the Judges, as Catlin Chiefe Justice reported in the Kings Bench, Pasch. 15 Eliz. for the Replevin was obtained in fraudem legis.

Pasch. 15 Eliz. Vide statutum.

¶ Carrying away.] For the Indictment saith, felonice cepit & asportavit. The removing of the things taken, though he carry not them quite away, satisfieth this word asportavit. As if a guest take the coverlet or sheets of his bed, and rising before day, take the Coverlet or sheets out of the chamber, where he lay, into the Hall, to the intent to steal them, and went to the stable to fetch his horse, and the Oster apprehended him, and this was adjudged Larceny: and the coverlet or sheets were carried away being removed from the Chamber to

22 Ass.pl.39.

the

the Hall, albeit they were ſtill in the houſe of the owner.

So if a mans horſe be in his cloſe, and one taketh him, and as he is carrying him away, he is apprehended, before he getteth out of the cloſe, yet this is ſufficient to make it Larceny. Juſtice Dalizons Report.

¶ Of mere perſonall goods.] It is ſaid [mere] for though they be perſonall goods, yet if they ſavour any thing of the realty, no Larceny can be committed of them; As any kind of corn or grain growing upon the ground is a perſonall chattell, and the Executors of the owner ſhall have them, though they be not ſevered, but yet no larceny can be committed of them, becauſe they are annexed to the realty. So it is of graſſe ſtanding on the ground, or of Apples, or any other fruits upon trees, or buſhes, or of woods growing; but if the owner cut the graſſe, or gather the fruit, or cut the wood, then larceny may be committed of them. 12 E.3. Cor. 199. 22 E.3. Ibid. 256. lib.4.fo.19.

So it is of a box or cheſt with Charters, no larceny can be committed of them, becauſe the Charters concern the realty, and the box or cheſt though it be of great value, yet ſhall it be of the ſame nature the Charters be of: & omne majus dignum trahit ad ſe minus. 10 E.4.14. Lib.8.fo.33.b. Caleys caſe.

No Larceny can be committed by taking, and carrying away of a ward, or of a villain, becauſe they are in the realty.

It appeareth by all our ancient Authors ubi ſupra, and by the ſtatute of W.1. that there is Grand Larceny, and Petit Larceny, diſtinguiſhed ſo by the value: for if the perſonall goods ſtoln amount to above the value of twelve pence, then is it grand larceny, and if it be under the value of twelve pence, then it is petit larceny, for which he ſhall forfeit all his goods, and ſuffer ſome corporall puniſhment, as whipping, &c. W.1.ca.15. See the expoſition thereof. 27 H.8.22. Coriũ forisfacere or perdere Sax. *tholiz his hide* is to be whipt. Mirror c.4. §. De crime de robbery.

And this was the ancient law before the Conqueſt, for the Mirror ſaith, Et tout ſoit que la ley ne tyt regard forſque al ceures des peuchers nequident limit le quantitie del robbery & larceny en ceſt manner, ceſtaſſavoir que nul ad judgement de la mort, ſi non larceny, &c. ne paſſont 12 deniers de ſterlings.

A man hath a meer property in ſome things that are tame by nature, and yet in reſpect of the baſenes of their nature, a man ſhall not commit any larceny, great or ſmall, though he ſteal them, as of maſtifs, bloud-hounds, or of other kind, dogs or of cats, nor of ſome things that be [a] wild by nature, and made tame, as bears, fores, apes, monkies, polcates, ferrets, and the like, and yet no manner of felony can be committed on them, in reſpect of their wilde and ſavage nature, and therefore no perſon ſhall die for them: and likewiſe it is of their whelps, or Calves, or young; for it is a rule in law, that if no felony can be committed of any thing that is ferum natura, and of age being reclaimed, or made tame, that no felony can be of the young in the neſt, kennell or den. Lib.7.fo.18. In caſe de Swans. [a] Vide verb (of another) next following. 12 H.8.39. 14 H.8.3,4. 18 H.8.2. 2 E.2. diſtres 28 leveret. 2 E.2. Avowry. 182. ferret.

[b] So as a man may have property in many things, and yet in reſpect of their nature there can be no felony of them. On the other ſide, of ſome things that be feræ natura, being reclaimed, felony may be committed in reſpect of their noble and generous nature and courage, ſerving ob vitæ ſolatium of Princes, and of noble, and generous perſons, to make them fitter for great employments: As all kind of Faulcons, and other Hawks, if the party that ſteals them know they be reclaimed. 38 E.3.10. 47 E.3.10. 5 H.5.1. 9 H.6.2. F.N.B.87.2. & 88 l. 86. l. [b] Mirror c.1.§.10. Dier 14 El.306, 307. 18 E.4.8. 16 E.4.11. 14 H.8.4.

¶ Of another.] [c] No larceny can be committed of wild beaſts, or of fowls that be wild, or of fiſhes that be at their naturall liberty in rivers, or great waters, becauſe theſe be nullius in bonis: but larceny may be committed of young pigeons in dovehouſes, or of young hawks in the neſt. But if any perſon upon the ground of any other, doe take the egs of any Faulcon, Goſhawk, Lanner, or Swan out of the neſt, this is not felony, [d] but he ſhall be impriſoned by the ſpace of a year and a day, and fined at the Kings will, the one half to the King, and the other to the owner of the ground. But larceny may be committed of the egs of ſuch as be domitæ natura, as of Hens, Turkies, Pehens, Vide before. 37 E.3.fo.17. F.N.B.86.l. [c] 18 H.8.2.b. Doct.& Stu.9.b. Britton 74,75. Bract.l.2.fo.9. 8 E.4.5. [d] 11 H.7.ca.17. 31 H.8.ca.12.

and the like. [a] And larceny may be committed of fishes in a trunk or pond, because they are not at their naturall liberty, but as it were beasts in a pound.

[b] But if such as be wild, that serve for the food of man, be made tame, as Deer, wild Boze, Conies, Cranes, Pheasant, Partridge, or the like, Larceny may be committed of them, so as he that stealeth them know that they be tame. But the Deer, &c. being wild, yet when he is killed larceny may be committed of the flesh, and so of Pheasant, Partridge, or the like: And so note a diversity between such beasts as be feræ naturæ, and being made tame serve for pleasure only, and such as be made tame and serve for food, &c. which diversity being not observed, hath made many men to erre.

A man may be indicted, Quare bona Capellæ in custodia, &c. and so in time of vacation, bona domus Ecclesiæ.

At the Assises at Leicester, in Lent, Anno 10 Jac. the case was this, one William Hain had in the night digged up the graves of divers severall men, and of one woman, and took the winding sheets from the bodies, and buried the bodies again: and I advising hereupon for the rarenesse of the case, consulted with the Judges at Serjeants Inne in Fleetstreet; where we all resolved, that the property of the sheets was in the Executors, Administrators or other owner of them, for the dead body is not capable of any property, and the property of the sheets must be in some body: and according to this resolution, he was indicted of felony at the next Assises, but the Jury found it but petit larceny, for which he was whipped, as he well deserved.

Nota. A felonious taking must be of the possession, and not of the property removed from the possession.

If a man doth bail, or lend his goods to another, although he hath the generall property of them, yet may he commit larceny of them, by the felonious taking and carrying them away, and in judgement of law he is said in this case to take the goods of another: for the bailer hath jus proprietatis, and the bailee hath jus possessionis, or a speciall property.

The wife cannot steal the goods of her husband, for they be not the goods of another, for the husband and wife are one person in law, Duæ animæ in carne una. Vide Stanf. Pl. Coron. fo. 24, 25.

To speak it here once for all, if any person be indicted of treason, or of felony, or larceny, and plead not guilty, and thereupon a Jury is returned, and sworn, their verdict must be heard, and they cannot be discharged, neither can the Jurors in those cases give a privy verdict, but ought to give their verdict openly in Court.

Macegriefs, fleshmongers, such as buy and sell stollen flesh, knowing the same to be stollen. Vide Lamb. inter leges Edw. Regis fol. 140. b. De Machecariis derived of mace an old word for flesh, and grief, wrong or injury.

[a] Stanf. 25. c. 12 E. 4. 4. 18 E. 4. 8. 22 H. 6. 59. 43 E. 3. 24. Vid. before, Verb. (Of meer personall goods) 3 H. 6. 55. lib. 5. fo. 104. b. lib. 7. fo. 16, 17.

[b] 10 E. 4. 14.

7 E. 4. 14. Stanf. 25.

10 Ja. Regis. Hains case. Furtum inauditum.

7 H. 6. 43.

21 H. 6. Cor. 455. Abbridge dasl. 63

Britton fo. 72.

CAP.

CAP. XLVIII.

De Anno Die & Vaſto.

Of the year day and waſt.

HEreof we have treated at large, in the ſecond part of the Inſtitutes in his proper place upon the expoſition of Magna Carta cap. 22, where it appeareth, that at this day the King ſhall have but the profits for a year and a day in lieu and ſatisfaction of the waſt which the Common law gave to the King in deſpite and deteſtation of the offence, as there you may read at large: and there it appeareth how neceſſary it is, ancient Authors to be read, all which need not here to be rehearſed: * and that if any Statute be made to the contrary of Magna Charta, it ſhall be holden for none. And therefore if Prærogativa Regis anno 17 E. 2. cap. ultimo, be contrary thereunto, it is repealed as to the waſt.

Mirror cap. 1. §. 3. & cap. 4. §. *Et le Roy in remembrances, &c.* Lege quia optime. Glanv. li. 7. cap. 17. Bracton lib. 3. fo. 119, 137. Britton c. 5. §. 14. Fleta lib. 1. c. 28. § *Cauſa vero, &c.* * 42 E. 3. cap. 1.

17 E. 2. Prær. Regis cap. ultimo. Regiſt. 165. Mag. Cart. cap. 22. 3 E. 3. Cor. 356. 327. 310. 290.

CAP. XLIX.

Of Piracy, felonies, robberies, murders, and confederacies committed in or upon the Sea, &c.

HAving now treated of felonies, &c. that are committed and done upon the land, we will conſider of Piracies, and felonies, &c. done on the ſea, which by an Act of Parliament are to be enquired of, heard, and determined according to the courſe of the Common law, as if they had been done upon the land.

Rot. Parl. 8 H. 6. nu. 42.

All treaſons, felonies, robberies, murders and confederacies committed in or upon the ſea, or in any other Haven, River, Creek, or place, where the Admirall hath, or pretends to have power, authority, or juriſdiction, ſhall be enquired, tried, heard, determined, and judged in ſuch ſhires, and places in the Realm, as ſhall be limited by the Kings Commiſſion under the Great ſeal in like form and condition, as if any ſuch offence had been committed upon the land, to be directed to the Lord Admirall, or to his Lieutenant, Deputy, or Deputies, and to three or four ſuch other ſubſtantiall perſons, as ſhall be named by the Lord Chancellour of England, for the time being, &c.

28 H. 8. ca. 15. Vid. 27 E. 3. c. 13. del ſtaple. 31 H. 6. cap. 4. Vide 2 R. 3. fo. 2. Vide Palaches caſe.

And ſuch as ſhall be convict of any ſuch offence by verdict, confeſſion, or proces by authority of any ſuch commiſſion, ſhall have and ſuffer ſuch pains of death, loſſes of lands, goods and chattels, as if they had been attainted of any treaſon, felony, robbery, or other the ſaid offences done upon the land.

See before in the chap. of Herſy.

The offenders not to be admitted to have the benefit of Clergy.

The miſchief before this ſtatute was (as it appeareth by the Preamble) that Traitors, Pirates, Thiefs, Robbers, Murderers, and Confederators upon the ſea many times eſcaped unpuniſhed, becauſe the Common Law of this Realm extended not to theſe offences, but were judged, and determined before the Admirall, &c. after the courſe of the Civill laws, the nature whereof is, that before any judgement of death be given againſt the offenders, either they muſt plainly confeſſe their offences (which they never will doe without torture or pains) or by * witneſſe indifferent, ſuch as law their offences committed, &c. which in theſe caſes cannot be gotten but by chance, or very rarely: For this cauſe, the Commons petitioned in Parliament in 8 H. 6. that the Juſtices of Peace might enquire of all Piracies: but the Kings anſwer was, That he would be adviſed.

See 40 Aſſ. pl. 25.

* Concerning treaſon, ſee before cap. 2. Verb. *All trials*, fo 25. 1 E. 6. ca. 12. 5 E. 6. ca. 11 &c. 2 Roe. Par. 8 H. 6. nu. 42.

This ſtatute requires a conſiderate and juſt interpretation, wherein, for that it concerneth the life of man, the ſafeſt way is, to follow the reſolutions of all the Judges formerly had upon due conſideration of all the parts of this Act, and upon divers conferences, and in the end, when I was Atturney generall, reſolved by them unanimouſly as followeth:

Hil. 5 Ja. Regis, at Serjeants Inne in Fleetſtreet, the reſolution of the Juſtices.

Where divers did in the reign of the late Queen Elizabeth commit Piracy and Robbery upon the high Sea, of divers Merchants of Venice, in amity with the ſaid Queen, and after the Pirats, being not known, obtained a pardon, granted at the Coronation of King James, whereby the King pardoned them all felonies (inter alia) Firſt, that before this ſtatute, Piracy or Robbery on the high Sea was no felony, whereof the Common Law took any knowledge, for that it could not be tried, being out of all Towns and Counties, but was onely puniſhable by the Civill law, as by the Preamble it appeareth; the attainder by which law wrought no forfeiture of lands, or corruption of blood. Secondly, that this ſtatute did not alter the offence, or make the offence felony, but leaveth the offence as it was before this Act, viz. felony only by the Civill law, but giveth a mean of triall by the Common law, and inflicteth ſuch pains of death as if they had been attainted of any felony, &c. done upon the land. But yet (as hath been ſaid) the offence is not altered, for in the Indictment upon this ſtatute, the offences muſt be alledged upon the ſea; So as this Act inflicteth puniſhment for that, which is a felony by the Civill law, and no felony, whereof the Common law taketh knowledge. Thirdly, although the King may pardon this offence, yet being no felony in the eye of the law of the Realm, but only by the Civill law, the pardon of all felonies generally extendeth not to it, for this is a ſpeciall offence, and ought to be eſpecially mentioned.

Three points reſolved.

Vide ſimilia. 19 E. 3. Cor. 124. 8 H. 4. 2. 9 E. 4. 28.

Upon this reſolution theſe conſequents do follow. 1. That by the Attainder upon this Act, though there be forfeiture of lands, and goods, yet there is no corruption of blood. 2. Seeing the offence is not made felony by the laws of this Realm, there can be no Acceſſory of any felony by the laws of the Realm in this caſe, either before or after the offence, becauſe the Principall is no felon by our law, neither doth this Act ſpeak of any Acceſſory. 3. If there be an Acceſſory upon the ſea to a Piracy, that Acceſſory may be puniſhed by the Civill law before the Lord Admirall, but cannot be puniſhed by this Act, becauſe it extendeth not to Acceſſories, nor makes the offence felony. * Laſtly, the ſtatute of 35 H. 8. cap. 2. taketh not away this ſtatute for treaſons done upon the ſea for the cauſe aforeſaid. Which reſolution I have thought good to report, becauſe it openeth the windows of this ſtatute.

* See the Fourth part of the Inſtitutes cap. High Treaſon. 5 El. cap. 5 Vide ſupra, cap. High Treaſon, Verbo *Or per ſtatut.* 11

In Trin. 18 Eliz. in Lord Diers Manuſcript, there is a Quære made, what offence it is to lodge and entertain upon the land a Pirat, knowing him to be a Pirat, and whether this Acceſſory upon the land ſhall be tried by this ſtatute, which is only of principals in Piracy. And it was thought by the two Chief Juſtices, that the ſureſt way, was to have the Commiſſion in the County where the Acceſſory offended, and there both the Principall and the Acceſſory may be indicted, and tried, Ut per ſtatutum anno 5 & 6 E. 6. Quære.

Hæc

Hæc ille. So as this Quære is now cleared by the resolution of the Judges: and questionlesse the Statute (intended of 2 & 3 E. 6. for there is none such in 5 & 6 E. 6.) extendeth only, when a murder or felony is committed in one County, and another person is accessory in another County (as hath been said before:) but in that case the offence was committed upon the sea, and not in any County, and so out of that Statute: and therefore this part of the Manuscript of the Lord Dier was not thought fit to be printed. 2 & 3 E. 6. ca. 24. Vid. Lib. 2. fo. 93. Bingham's case. See the Lord Sancar's case, lib. 9. 117, 118.

Butler and other Pirats in Summer vacation robbed divers of her Majesties subjects, upon the Coast of Northfolk, upon the high Sea; and brought divers of the goods so taken into the County of Northfolk, and there were apprehended with the goods: The question moved to Wray Chief Justice, and Justice Peryam, Justices of Assize in Northfolk, was, Whether they might be indicted of Felony in Northfolk, as if one steal goods in one County and carry them into another County, he may be indicted in either County: and it was resolved by them, that they could not be indicted for felony in Northfolk, because the originall taking was no felony, whereof the Common law took conusance, because it was done upon the sea, out of the reach of the Common law: and therefore not like the case, where one stealeth in one County and carrieth the goods into another, for there the originall act was felony whereof the law took conusance. Anno 28 Eliz. Butler's case.

But now let us peruse the words of the Statute.

¶ Where Traitors, Pirats] This word Pirat, in Latine Pirata, is derived from the Greek word πειρατης, which again is fetched from πειρᾶν, à transeundo mare, of roving upon the sea: and therefore in English, a Pirat is called a Rover and a Robber upon the sea.

¶ Treason, &c.] Note, treason done out of the Realm, is declared to be treason by the Statute of 25 E. 3. And yet at the making of this Act of 28 H. 8. it wanted triall, (as by the preamble of this Statute it is rehearsed) at the Common law. And therefore to establish a certainty therein, the Statute of 35 H. 8. was made, as is aforesaid in the exposition of the Statute of 25 E. 3. See Pasch. 43 Eliz. lib. 5. fo. 107. Sir Henry Constables case.

Before the Statute of 25 E. 3. if a subject had committed Piracy upon another (for so is the book to be intended upon a fact done before 25 E. 3.) this was holden to be petit treason, for which he was to be drawn and hanged: because Pirata est hostis humani generis, and it was contra ligeanciæ suæ debitum: but if an Alien, as one of the Normans, who had revolted in the reign of King John, had committed piracy upon a subject, this offence could be no treason, for though he were hostis humani generis, yet the crime was not contra ligeanciæ suæ debitum, because the offender was no subject, but since the Statute of 25 E. 3. this is no treason in the case of a subject. 25 E. 3. cap. 1. 40 Ass. p. 25.

¶ Upon the Sea, or in any other Haven, River, Creek, or other place, where the Admirall hath, or pretends to have power, authority, or jurisdiction.] These words [or pretends to have, &c.] are thus to be understood, between the High-water mark, and the Low-water-mark: for though the land be infra corpus comitatus, at the reflow; yet when the sea is full, the Admirall hath jurisdiction super aquam as long as the sea flows: so as of one place there is divisum imperium at severall times: but extend not to any Haven, River, Creek, or other place, that is infra corpus comitatus: for offences there committed were triable by the Common law, and out of the mischief and purview of this Statute: for in the preamble, the sea is only mentioned, and in the body of the Act it is said, in like form and condition, as if any such offence had been committed upon the land. 8 E. 2. cor. 399. 46 E. 3. Conusance 36. Stanf. pl. coron. 51 k. Regist. 129. 13 R. 2. ca. 5. 2 H. 4. cap. 11. Pl. com. 37. 2 R. 3. fo. 12. 19 H. 6. 7. 30 H. 6. 6. per Prisot. Fortescue. ca. 34.

¶ As shall be named by the Lord Chancellor of England.] A nomination by the Lord Keeper of the great Seal of England was taken to be

be within this Act by the greater opinion of the Iuſtices: but the ſtatute of 5 Eliz. hath made a Declaration of the Common law concerning the power and authority of the Lord Keeper of the Great Seal, which hath cleared that, and all other like queſtions.

5 Eliz. cap. 18.

¶ To heare and determine ſuch offences after the common courſe of the Laws of this Land uſed for treaſons, felonies, &c. done and committed upon the Land.] If the offender upon his arraignment before Commiſſioners by force of this Statute ſtand mute, he ſhall have judgement De peyne fort & dure, by force of this generall branch, but it is out of the latter words of the Act, viz. And ſuch as ſhall be convict of any ſuch offence by verdict, confeſſion, or Proces. For he that ſtandeth mute, is not convict of the offence, but ſuffereth for his contumacy. Alſo it is neither by Verdict, confeſſion, or Proces.

Trin. 7 Eliz. Dier 241. the caſe of Brook *alias* Cobham.

For peine fort & dure; See in the ſecond part of the Inſtitutes, in the expoſition upon the Statute of W. 1. cap. 12.

CAP. L.

Of Clergy.

VVHat perſon ſhall have his Clergy, for what offences, in what ſuits, who is Iudge thereof, and at what time Clergy is to be demanded, you may reade at large in Alexander Poulters caſe in the Eleventh part of my Reports: where alſo is reſolved the diverſity between a Clerk convict, and a Clerk attaint; what a Clerk convict which hath his Clergy ſhall forfeit, and at what time; and that none that hath his Clergy allowed ought to make any purgation at this day; and that the King may pardon the burning of the hand, as well in an Appeale, as upon an Indictment.

Lib. 11. fo. 29, 30, &c. Alexander Poulters caſe.

[a] If the principall hath his Clergy before attainder, the acceſſory either before or after ought to be diſcharged.

Lib. 5. 26, 27. in Caudries caſe. Vid. Lib. 5. fo. 50. Biggens caſe, & fo. 110. Heſtons caſe. 18 Eliz. cap. 6. a Lib. 4. fo. 43, 44. Syers caſe. ib. Bibiths caſe. 2 E. 3. 27. 22 E. 3. Br. cor. 260. 7 H. 4. 16. 10 H. 4. 5. 3 H. 7. 1. 3 H. 7. cor. 53. 4 E. 6. cor. 184. 3 Aſſ. 14. 5 Aſſ. 5. 11 H. 4. 93.

[b] You may adde to the former report a Record in Rot. Clauſ. An. 3 E. 3. m. 2. & 18. That for Sacrilege the Ordinary may allow Clergy. So as it is in the election of the Ordinary, either to allow or diſallow Clergy in that caſe.

b Rot. cl. 3 E. 3. m. 2. 18.

[c] See a notable Record Trin. 21 E 3. coram Rege, Rot. 173. Hertford, that Privilegium Clericale non competit ſeditioſo equitanti cum armis platis, & cote-armuris, per leges Angliæ.

c Tr. 21 E. 3. cor. rege, Rot. 173. Hertford.

[d] It is provided by the ſtatute of 25 H. 8. that if any perſon be indicted of felony for ſtealing of any goods or chattels in any County, and thereupon arraigned, and be found guilty, or ſtand mute, or challenge peremptory above the number of twenty perſons, &c. they ſhall loſe the benefit of their Clergy, in like manner as they ſhould have done, if they had been indicted and arraigned, and found guilty in the ſame County, where the ſame robbery or burglary was done and committed, if it ſhall appear to the Iuſtices, &c. by evidence given before them, or by examination, that for ſuch robbery or burglary in the ſame Shire where they were committed or done, they ſhould have loſt the benefit of their Clergy by force of the ſaid Statute, viz. of 23 H. 8. cap. 1.

d 25 H. 8. cap. 3. 32 H. 8. c. 3. Vid. 1 E. 6. ca. 12. 5 E. 6. cap. 10.

¶ Any perſon indicted.] This Act extendeth not to Appeales by Writ or Bill, nor to the Appeals of the Approvors.

¶ Or by examination.] [e] By theſe words though the offender confeſſe the Indictment, or ſtand mute, or challenge above twenty, &c. yet if by examination

e Poulters caſe. Ubi ſupra fo. 31.

tion before the Juſtices, the truth of the caſe appeareth, he may be put from his Clergy.

¶ By force of the ſaid Statute.] viz. 23 H. 8. So as if for any Burglary or Robbery in one County he were not ouſted of his Clergy by the Statute of 23 H. 8. but ſome later Statute, then the Delinquent ſhall have his Clergy in the County where the goods are carried: For example, if the robbery be done in a dwelling houſe, the owner or dweller, his wife, his children, or ſervants then being within the houſe, and put in fear and dread by the ſame, and the goods be carried into another County, he ſhall not have his clergy: but if the robbery in the dwelling houſe be not done with all the circumſtances mentioned in this Act of 23 H. 8. (which circumſtances are not required by the Statute of 5 E. 6. cap. 9.) he ſhall not be ouſted of his Clergy in the other County. And ſo of all like caſes. Vid. Stanf. pl. cor. fo. 123, &c. De Clergy.

See 1 Jac. cap. 8. Clergy taken from him which do ſtab another that hath not drawn a weapon, nor ſtricken firſt.

CAP. LI.

Of Abjuration and Sanctuary.

ABjuration by the courſe of the Common law may be thus deſcribed. When a man or a woman had committed felony, and the offender for ſafegnard of his or her life had fled to the Sanctuary of a Church or Churchyard, and there before the Coroner of that place within forty days had confeſſed the felony, and took an oath for his or her perpetuall baniſhment out of the Realm into a forain countrey, chooſing rather, Perdere patriam quàm vitam. But that forain countrey, into which he was to be exiled, muſt not be amongſt Infidels. And this was the ancient law of this Realm, which was, Prohibemus autem ne Chriſtiana fide tinctus quiſpiam à regno procul amandetur, neve ad eos qui nondum Chriſto fidem adjunxerunt relegetur, ne eorum aliquando fiat animorum jactura, quos propria Chriſtus vita redemit. Cuſt. de Norm. cap. 24. & 8. Inter leges Inæ. cap. 5. Inter leges Canuti, fo. 105. ca. 3.

The foundation of the Abjuration was the Sanctuary of the Church or Churchyard. For he or ſhe, that was not capable of this Sanctuary, could not have the benefit of Abjuration. [a] And therefore it is ſaid, that he that committed Sacriledge, becauſe he could not take the privilege of Sanctuary, could not abjure. For the forme of Abjuration ſee the ſtatute of Abjuration, Vet. Magna Carta, part 1. fol. 167. b. The [b] Common law herein was very ancient, and had ſaved the life of many a man; and continued without change untill an Act made in the Twenty ſecond year of H. 8. cap. 14. whereby it was provided, that the party abjured ſhould not be baniſhed out of the Realm, but to ſome other Sanctuary within this Kingdom: [c] and to ſay the troth, Abjuration was exceedingly intricated and perplexed by the ſaid Act of 22 H. 8. cap. 14. and other ſtatutes: For which cauſes all Statutes made before the Thirty fifth year of Queen Elizabeth, concerning abjured perſons, ſtand repealed by the Statute of 1 Jac. cap. 25. whereby the ancient common law concerning abjuration for felony was revived.

[d] But by an Act made in the Twenty firſt year of King James it is enacted, that no Sanctuary or privilege of Sanctuary ſhould be admitted or allowed in any caſe. By which Act, ſuch abjuration as was at the common law, founded (as hath been ſaid) upon the privilege of Sanctuary, is wholly taken away: and the Writ in the Regiſter 69. a. De reſtitutione extracti ab Eccleſia is become of no uſe.

[c] And yet the abjuration by force of the Statute of 35 Eliz. ca. 1. before Juſtices

a 8 E. 2. cor. 420.
b Sir Thomas Weyland Chief Juſtice of the Common Pleas, Anno 17 E. 1.
Vid. Inter placita Parl. An. 19 E. 1. apud Aſhring in Cro. Epiphaniæ
c 50 E. 3. cap. Artic. Cleri.
9 E. 2. c. 10.
1 R. 2. cap. 9.
7 H. 7. cap. 7.
21 H. 8. cap. 2.
22 H. 8. ca. 14.
26 H. 8. cap. 13.
28 H. 8. cap. 1.
33 H. 8. cap. 15.
1 E. 6 cap. 12.
2 E. 6. ca. 2. & 33.
5 E. 6 cap. 10.
13 Eliz. ca. 7.
1 Jac. cap. 25.
d 21 Jac. in the continuance of Statutes, &c.
e 35 El. ca. 1 & 2.

ces of Peace, or Iuſtices of Aſſize, or by force of an Act made at the ſame Parliament, cap. 2. before two Iuſtices of Peace or the Coroner by a Recuſant, remaineth ſtill: becauſe ſuch abjuration hath no dependency upon any Sanctuary. Which being ſufficient to ſhew how the Law ſtandeth at this day, both concerning Sanctuary and Abjuration, might ſuffice.

But yet he that is deſirous to reade the generall learning of Abjuration the Branch, and of Sanctuary the Root, let him reade the Mirror, cap. 1. §. 13. & cap. 5. §. 1. where he may read the right uſe of Abjuration by the ancient law of England. Et inter leges Edwardi nu. 10. Cuſtum. de Normandie cap. 24. Officium coronatorum tit. Abjuration, Raſt. pl. 2. Bracton li. 3. fo. 135. & 136. Britton cap. Abjuration, fo. 24. & cap. Coroners, fo. 7. And Fleta lib. 1. cap. 29. 8 E. 2. Ubi ſupra. 3 E. 3. Coron. 313. 335. 21 E. 3. 17. 29 Aſſ. p. 34. Rot. Pat. 25 E. 3. part. 3. m. 16. Hil. 43 E. 3. Rot. 10. Coram Rege Buck. Hil. 26 E. 3. Coram Rege Rot. 20. Quando aliquis abjuravit regnum, Crux ei deliberat' fuit in manu ſua portanda in itinere ſuo per ſemitas ſuas, & vocatur Vexillum Sanctæ Eccleſiæ. Rot. Parl. 2 R. 2. nu. 28. the right uſe of Sanctuary. 6 H. 4. 2. 8 H. 4. 2. 11 H. 4. 40. 7 H. 6. 8. 27 H. 6. 7. 2 E. 4. 17. 21. 9 E. 4. 29. 12 E. 4. 1, 2. 3 H. 7. Coron. Fitz. 54. 1 H. 7. 23, 25. 8 H. 8. Kelway. 188, 189. 190, 191. Fitz. Iuſtice of Peace, fol. 202. Stanf. pl. cor. cap. Abjuration. fo. 116, 117, &c. Et ibidem Sanctuary. cap. 38. Dier 13 Eliz. fo. 296. Lib. 5. fo. 12. 26. Lib. 6. fo. 9. Lib. Intrat. Tit. Abjuration & Sanctuary.

CAP. LII.

De Huteſio & Clamore.

Of Hue and Cry.

THe one being an expreſſion of the other. For huer in french (unde Huteſium) is to hoot or ſhout; in engliſh to cry. There be two kinds of Hues and Cryes, the one by the Common law, and the other by ſtatute. Thereupon there are two purſuits, the one for the King, the other for the party by private ſuit.

Hue and Cry by the Common law, or for the King, is, when any felony is committed, or any perſon grievouſly and dangerouſly wounded, or any perſon aſſaulted and offered to be robbed either in the day or night; the party grieved, or any other may reſort to the [a] Conſtable of the Town, and acquaint him with the cauſes, deſcribing the party, and telling which way the offender is gone, and require him to raiſe Hue and Cry. And the duty of the Conſtable is, to raiſe the power of the town, [b] as well in the night as in the day, for the proſecution of the offender, and if he be not found there, to give the next Conſtable warning, and he the next, untill the offender be found: and this was the law before the Conqueſt. [c] Si quis latroni obviam dederit, eumque nullo edito clamore abire permiſerit, quanticunque fuerit latronis vita æſtimata extremum ſolvat denariolum, aut pleno, perfectoque jurejurando de facinore ſe nihil habuiſſe cogniti confirmato. Sin quis proclamantem exaudierit, neque vero fuerit inſequutus, ſuæ in regem contumaciæ (ni omnem criminis ſuſpicionem diluerit) pœnas dato.

In antiquo M. S. Si quis furi obviaverit, & ſine vociferatione gratis eum dimiſit, emendet ſecundum Weram ipſius furis, vel plena lada ſe adlegiet, quòd cum eo falſum neſcivit: ſi quis audito clamore ſuperſedit, reddat Overſameſſa regis aut plene ſe laidiet. Bracton who wrote before any Act of Parliament concerning Hue and Cry, ſaith, Omnes tam milites, quam alii qui ſunt 15 annorum

[a] Rot. Parl. An. 6 E. 3. num. 6. Conſtable of the town to make hue and cry.
[b] 2 E. 4. 8. b. & 9 a.
[c] Inter leges Canuti fo. 110. c. 26. See Inter leges Edw. Conf. ca. 21.
For Overſameſſa, See lib. Rub. cap. 36. Bracton li. 3. fo.

norum & amplius, jurare debent quòd utlagatos, murditores, robbatores, & burglatores non recipient, &c. Et ſi Huteſiũ vel Clamorẽ de talibus audiverint, ſtatim audito clamore ſequantur cum familia, &c. **and herewith agreeth** Britton.

Britton fo. 15. & 19. Fleta li. 1, c. 24.

The ſtatute of W. 1. cap. 9, **being in affirmance of the Common law, provideth,** Que touts communement ſoient preſts a les ſomons des Viſcounts, & au crie de pais de ſuer & arreſter felons, quant miſter ſerra, auxibiens deins franchiſes come dehors.

See the 2. part of the Inſtitutes, W. 1. ca. 9.

And the ſtatute of 4 E. 1. **declareth the law** ſimiliter de omnibus homicidiis, Burglar, occiſis, ſeu * periclitantibus levetur Huteſium, &c. & omnes ſequantur Huteſium, & veſtigium ſi fieri poteſt: & qui non fecerit, & ſuper hoc convictus fuerit, attachietur quòd ſit coram Juſticiariis de Gaola, &c. **And by that Act it appeareth that ſo it is in caſe of Rape, and therewith agreeth** [a] Bracton alſo.

4 E. 1. de officio coronatoris. See the ſtatute of Winch. 13 E. 1. * 7 E. 3. fo. 16. 22 Aſſ. 57. 38 E. 3. fo. 6. aſſaulted to be robbed. 9 E. 4. 26. See the Cuſtum' of Norm. ca. 24. *a* Bracton li. 2. fo. 28 E. 3. ca. 11.

The life of hue and cry is freſh ſuit.

[b] Thamar **the daughter of King** David **being violently raviſhed by her brother** Amnon, **the very ſaith of her,** Quæ aſpergens cinerem capiti ſuo, ſciſſa talari tunica, impoſitiſque manibus ſuper caput ſuum ibat ingrediens, & clamans.

b 2 Regum c. 13. Verſ. 19.

[c] **They which levy not Hue and Cry, or purſue not upon hue and cry, ſhall be puniſhed by fine and impriſonment.** [d] **Alſo if a man be preſent when a man is murdred, or robbed, and doth not endeavour to attach the offender, nor levy hue and cry, he ſhall be fined and impriſoned.**

c Bract. li. 3. fo. 118. b. Ca. Itin. m. c. 155. 3 E. 3. Cor. 333. *d* See 8 E. 2. Cor. 395.

Of Hue and Cry by force of Acts of Parliament in five caſes. [e] **Firſt, if a watchman doth arreſt a night walker, and he diſobey and fly, the watchman may make hue and cry.**

e Stat. de Winc. watch. 4 H. 7. fo. 2. 18.

2, [f] Si quis foreſtarius, Parcarius, aut Warrennarius in baliva ſua malefactores aliquos invenerit vagantes ad damnum ibidem faciend', & qui ſe Foreſtariis aut Warennariis illis poſt Clamorẽ & Huteſium levatum ad pacem regis ad ſtandum recte reddere noluerint, immo ad malitiam ſuam exequend' & continuand' & pacem regis diffugiend' fugam fecerint, & vi & armis ſe defenderint, licet Foreſtarii, Parcarii & Warrennarii illi, aut alii quicunque ad pacem domini regis exiſtentes in comitativa Foreſtariorum, Parcariorum, aut Warrennariorum illorum venientes ad tales malefactores ſic inventos arreſtand' ſeu capiend', aliquem ſeu aliquos hujuſmodi malefactorum interfecerint, non propter hoc occaſionentur coram domino rege, & juſticiariis quibuſcunque aut aliis balivis domini regis, aut aliorum quorumcunque infra libertatem aut extra: nec propter hoc amittant vitam, aut membrum, aut aliam pœnam ſubeant, immo firmam pacem domini regis inde habeant. Sed bene caveant Foreſtarii, Parcarii, Warrennarii, & alii quicunque, ne occaſione contentionis, diſcordiæ, contumeliæ, aut alicujus malevolentiæ, ſeu odii præhabit' aliquibus per balivas ſuas tranſeund' malitioſe imponant, quod occaſione malefaciendi in balivis ſuis intrant, cum hoc non fecerint, nec ipſos vagantes ut malefaciant, nec malefacientes invenerint, nec cauſam malefaciendi quærentes, & ſic eos occidant. Quod ſi fecerint, & de hoc fuerint convicti, fiat de morte ſic interfectorum, prout aliorum ad pacem domini regis exiſtentium, & prout de jure, & ſecundum conſuetudinem regni fuerit faciend'.

f Statutum de Anno 21 E. 1. Magna Cart. fo. 118. a. Foreſters.

3. **Welſhmen outlawed, or indicted of treaſon or felony, that fly into Herefordſhire, ſhall be apprehended,** &c. **or elſe purſued by hue and cry, and a forfeiture upon thoſe that doe not purſue.**

23 H. 6. ca. 5. Vid. 17 H. 8. c. 26. Welſhmen.

4. **Hue and Cry ſhall be leavied upon takers of carriage within the Clergy of the Staple of that which pertaineth to the Staple.**

27 E. 3. ca. 4. ſtaple.

5. **Where a man is robbed: Upon hue and cry,** &c. **what remedy he ſhall have againſt the Hundred,** &c. **and how and in what manner the hue and cry ſhall be made in that caſe, ſee the ſtatutes,** & lib. 7. fo. 6. & 7. **the ſtatutes well expounded. And this robbery muſt be done in the day time, and not in the night, otherwiſe the party grieved ſhall not have his Action. And ſo note a diverſity between a hue and cry at the Common law, or for the King, and a hue and cry by ſtatute where the party grieved is to have his remedy by private action. Note alſo a diverſity in the proſecution at the Common law, or for the King, and by the ſtatutes which give the party remedy, for a proſecution to the next Conſtable is**

Winch. 13 E. 1. 28 E. 3. c. 11. 27 El. c. 13. 38 El. ca. 25.

good by the Common law, but ſo it is not by the ſaid ſtatutes, which give the party grieved his Action. See lib. 7. fo. 7, 8. & 8. 22 El. Dier 370. So the proſecution at the Common law is a good excuſe upon an Indictment at the Kings ſuit, but note that it is no bar to the parties Action.

Lib. 7. fo. 7, 8.
22 El. Dier 370.

Where Hue and Cry either by the Common law, or by force of any ſtatute is levied upon any perſon, the arreſt of ſuch perſon is lawfull, although the cauſe of the Hue and Cry be feigned; & if the caſe be feigned, he that levy the ſame ſhall alſo be arreſted, and ſhall be fined and impriſoned. But common fame and voice is not ſufficient to arreſt a man in caſe of felony, unleſſe a felony be done indeed.

29 E. 3. 9.
38 E. 3. 6.
See 5 H. 7. 5. 2.
21 H. 7. 28. 2.

It is an article of the Leet, to enquire of Hues and Cries levied and not purſued.

Stat. de 18. E. 2.

Mandatum eſt Guilielmo de Haverhull Theſaurario Regis, quòd Civitatem London capiat in manum Regis, eo quòd Cives ejuſdem Civitatis non levaverunt Huteſium & Clamorem pro morte Magiſtri Guidonis de Arretio & aliorum interfectorum ſecundum legem & conſuetudinem Regni. Teſte Rege apud Wendeſtok 22 die Auguſti.

De civitate London capienda in manum Regis. pro Huteſio non levato.
Rot. Clauſ. 30 H. 3. m. 5.

CAP LIII.

Of Mayhem.

OF Mayhem you may read at large in the Firſt part of the Inſtitutes Sect. 194. & 502. and in Juſtice Stanford. And where (as it is there cited) he ſaith, Caſtratio verò, quamvis latens ſit, adjudicatur mahemium. Hereof we find an example.

[a] Firſt part Inſtitutes §. 194. 502. Stanf. Pl. Cor. 38. b. Cuſt. de Norm. ca. 79. Mehaimus. Bracton lib. 3. 144, 145. Fleta li. 1. ca. 38.

[b] H. Hull indictatus fuit de mayhemio, eo quòd abſcidit virilia Johannis monachi, &c. quem idem H. deprehendit, &c, cum A. uxore ſua. Of the like accident you may read in Camden.

[b] Rot. Clauſ. anno 13. H. 3. nu. 9. See before ca. 13. for cutting out of tongues, &c.

[c] Dominus Robertus Nevil (cum numeroſam prolem ex uxore ſuſcepiſſet) ignotus in adulterio deprehenſus, & ab adulteræ marito in vindictam genitalibus mutulatus, brevi vi doloris expiravit.

Vide inter leges Alveredi, cap. 40. de vulneribus fo. 43.

[c] Camden Brit. pag. 593.

[d] By the ancient law of England, he that maimed any man, whereby he loſt any part of his body, the Delinquent ſhould loſe the like part, as he that tooke away another mans life, ſhould loſe his own.

And it is truly ſaid, that Duellum eſt Mahemium inceptum, and Mahemium eſt Homicidium inchoatum. And therefore in the Appeal or Indictment it is ſaid Felonicè mayhemavit.

[d] Bract. lib. 3. fo. 148. nu. 4. Mirror cap. 4. §. De pains in divers manners. Brit. fo. 48. b. Fleta li. 1. ca. 38. Membrum pro membro. 18 E. 3. 20. a. Vide 28. E. 3. fo. 94. 8 H. 4. 20, 21. Coron. 458.

CAP.

CAP. LIV.

Of Premunire.

PRimerment pur ceo que monſtre eſt a noſtre ſeigniour le roy per grevouſes & clamouſes pleints des Grandees & Communes avant ditz, coment pluſors gents ſont, & ount eſtre treits hors de realme a reſponder des choſes dount la conuſans apperteint a la court noſtre Seigniour le roy; Et auxint que les judgements rendus in meſme le court ſont empeache en autre court, in prejudice & diſheriſon noſtre dit Seigniour le roy & de ſa corone, & de tout le people de ſon dit realme, & in defeaſance & anientiſment de la Common ley de meſme le realme uſe de touts temps. Sur quoy ewe bone deliberation ove les Grandees & auters de dit councell, Aſſentus eſt & accord per noſtre dit Seigniour le roy, & les Grandees & communes ſuiſditz, Que touts gents de la ligeance le roy, de quel condition que ilz ſont, que trahent nulluy hors de realme en plea dont le conuſance apperteint a la court le roy, ou des choſes dont judgement ſoit rendus en le court le roy; ou que ſuent en autri court a defaire ou impeacher les judgements rendue in le court le roy, Eient joure, &c. In Engliſh thus.

27 E. 3. cap. 1. The print being examined agreeth with the Record. See the firſt part of the Inſtitutes, Sect. 199.

The ſtatute of 16 R. 2. cap. 5. ſaith; In curia Romana, vel alibi.

FIrſt becauſe it is ſhewed to our Lord the King by the grievous and clamorous complaints of the Great Men and Commons aforeſaid, how that divers of the people be, and have beene drawne out of the Realme to anſwer of things, whereof the cogniſance pertaineth to the Kings Court: And alſo that the judgements given in the ſaid Court be impeached in another Court in prejudice and diſheriſon of our Lord the King, and of his Crowne, and of all the people of his ſaid Realme; and to the undoing and deſtruction of the Common law of the ſame Realme at all times uſed. Whereupon, upon good deliberation had with the Great Men and other of his ſaid Councell, it it aſſented and accorded by our Lord the King, and the Great Men and Commons aforeſaid, that all the people of the Kings ligeance, of what condition that they be, which ſhall draw any out of the Realme in plea, whereof the cogniſance pertaineth to the Kings Court, or of things whereof judgement is given in the Kings Court, or which doe ſue in any other Court to defeat or impeach the judgements given in the Kings Court, ſhall have day, &c.

The effect of the Statute of 16 R. 2. is, If any purſue or cauſe to be purſued in the court of Rome, or elſewhere, any thing which toucheth the King, againſt him, his Crowne and Regality, or his Realme, their Notaries, Procurators, &c. Fautors, &c. ſhall be out of the Kings protection. 16 R. 2. cap. 5.

Fourth part of the Inſtitutes, cap. 8. Artic. 1. Die Decemb. Anno 21 H. 8. againſt Cardinall Woolſey.

In this Act is declared the Soveraignty, Prerogative, and Freedome of the Crowne of England, and the firſt Article exhibited by the Lords of the Councell, (whereof Sir Thomas More Chancellor was one) and the principall Judges concerning this matter, is worth your reading.

Vet. N. B. 143.

This offence is called a Premunire of the words of the Writ, grounded upon this and other Statutes for puniſhment thereof. For the words of the Writ be, Rex vicecomiti, &c. Premunire fac. A. B. &c. And rightly it is ſo called, for he that is præmonitus is præmunitus.

Before the making of this Statute of 27 E. 3. there were three great miſchiefs. Firſt, that the Kings ſubjects have been drawn out of the Realme, to the anſwer of things, whereof the conuſance pertained to the Kings Court. Secondly, of things whereof judgements have been given in the Kings Courts. And thirdly, that after judgements given in the Kings Courts of the common law, of matters determinable by the common law, ſuits were commenced in other Courts within this Realme, to defeat or impeach thoſe judgements. And theſe three miſchiefs had three unſufferable effects: Firſt, the prejudice and diſherſon of the King and of his Crowne. Secondly, the diſherſon of all his ſubjects. And thirdly, the undoing and deſtruction of the common law of this Realme: all which appeare in the preamble of this Act.

They are called [other Courts,] either becauſe they proceed by the rules of other lawes, as by the Canon or Civill law, &c. or by other trials, then the common law doth warrant. For the triall warranted by the law of England for matters of fact, is by verdict of twelve men before the Judges of the common law of matters pertaining to the common law; and not upon examination of witneſſes in any Court of equity: So as alia curia, is either that which is governed per aliam legem, or which draweth the party ad aliud examen. For if the freehold and inheritances, goods, and chattels, debts, and duties, wherein the King or ſubject hath right or property by the common law, ſhould be judged per aliam legem, or be drawne ad aliud examen, the three miſchiefs aforeſaid expreſſed in the preamble and in this Act ſhould follow, viz. diſherſon of the King and of his Crowne, the diſherſon of all his people, and the undoing and deſtruction of the common law at all times uſed: by which words of this Act it appeareth, that all theſe miſchiefs were againſt the ancient common lawes at all times uſed. And that alſo appeareth by the ancient Writs of the common law, called Ad jura regia, whereof ſome touch hath been given before, and which are worthy the reading; and alſo by divers Acts of Parliament; as the Statute of Carliſle, Anno 35 E. 1. whereof we have treated before in the Second part of the Inſtitutes: and by the ſtatute of 25 E. 3. De proviſoribus. And it is obſerved, that in 29 E. 3. within two yeares after the ſaid Act of 27 E. 3. that they that were called in queſtion upon the ſtatute of Premunire, Invenerunt manucaptores ſufficientes, & ſacramentum præſtiterunt, quod non attemptabunt, citra mare vel ultra, quod in præjudicium regis, legum, ſeu coronæ, ſeu judiciorum in curia Regis reddit, tendere valeat quoquo modo, &c. Whereby, and many other like Records it appeareth, that judgement ought not to be queſtioned citra mare, in any Court, unleſſe it be according to the courſe of the Lawes of the Realme.

Regiſt. 61, 62. &c.

Mic. 29 E. 3. coram Rege. Rot. 44. Cornub. V. 46 E. 3. 13, 14. Nota, citra mare.

By the ſtatute of 4. H. 4. cap. 23. it is ordained and eſtabliſhed, that after judgements given in the Courts of our Lord the King, the parties and their heires ſhall be thereof in peace, untill the judgement be undone by attaint, or by error, if there be error, as hath been uſed by the Lawes in the times of the Kings Progenitors.

4 H. 4. ca. 23.

[a] Alſo that which hath been ſaid appeareth by our Books and ancient Records, as hereafter ſhall appeare.

[a] 10 H. 4. 1, 2. 18 H. 6. 6. b.

[b] 5 E. 4. fo. 6. where the ſtatute of 16 R. 2. cap. 5. ſaith, In curia Romana vel alibi, Eccleſiaſticall courts within the Realme are within this word [alibi.]

[b] 5 E. 4. 6. b. 44 E. 3. 36.

[c] Mich. 11 H. 7. it was adjudged by the whole Court, that a ſuit in the Eccleſiaſticall Court within the Realme for a temporall cauſe, was in caſe of Premunire.

[c] 11 H. 7. Premunire Fitz. 15 H. 7. 9. acc' lib. Inter. Raſt. 468.

A

[d] A preſident of a Premunire, for ſuing in the Eccleſiaſtical Court for a debt.

[c] It was reſolved, that he that ſued in the Eccleſiaſticall Court for the forgery of a laſt Will and Teſtament, incurred the danger of a Premunire, becauſe the party grieved might have his remedy by the common law. And in the ſame year of 17 H. 7. Juſtice Spilman alſo reporteth, that one Turbervile, as well for the King, as for himſelfe, did ſue a Premunire againſt a perſon for ſuing for tithes in the Eccleſiaſticall Court, alledging the ſame to be ſevered from the nine parts, and judgement given againſt the defendant.

Alſo it appeareth that the Admirals Courts is within this word [alibi] if he hold plea of any thing, which is not done ſuper altum mare, but infra corpus comitatus.

[f] Richard Beuchampe Eſquire and Thomas Pauncefoot Eſquire, and others, are charged with the offence of Premunire, for that they ſued John Creſſey Eſq; before Henry Duke of Exeter Admirall of England, for taking away a Croſſe of gold and other goods, ſuppoſing the ſame to be taken ſuper altum mare, where in truth they were taken at Stratford in the County of Eſſex; where the ſtatute of 16 R. 2. is recited, that none ſhould ſue in curia Romana ſeu alibi, &c. and that the conuſance of this plea belonged to the common law, and not to the Court of the Admirall. And ſo it is of the Conſtable and Marſhall, if they hold plea of a matter determinable by the common law.

[g] Iſabel Winnington exhibited a bill of Premunire againſt William Powdich upon the ſtatute of 16 R. 2. cap. 5. for ſuing in the Admirall court before John Earle of Huntingdon, Admirall of England, for a cauſe which belonged to the common law, whereunto the defendant pleaded not guilty.

And the reaſon of all theſe caſes is, becauſe they draw matters triable by the common law ad aliud examen, and to be diſcuſſed per aliam legem.

But ſome have made a queſtion, Whether ſince the Eccleſiaſticall Juriſdiction was acknowledged to be in the Crowne, an Eccleſiaſticall Judge holding plea of a temporall matter belonging to the common law, doth incurre the danger of a Premunire. Though hereof there is no queſtion at all, yet leſt any man might be led into an errour in a caſe ſo dangerous, we will cleare this point by Reaſon, Preſident, and Authority. The reaſon holdeth ſtill to draw the matter ad aliud examen, &c. And the like queſtion might be made for the Admirall court, which is, and ever was, the Kings Court, but governed per aliam legem: and ſo likewiſe of the Court of the Conſtable and Marſhall.

At a Convocation holden Anno 22 H. 8. by a publick inſtrument made by all the Biſhops and the whole Clergie of England, the King was acknowledged to be Supreame head of the Church of England. [h] After this, viz. 24. H. 8. it appeareth that the Statute of Premunire remained in force againſt Eccleſiaſticall Judges, for holding of pleas meerly determinable by the common law.

In 25 H. 8. Richard Nick Biſhop of Norwich was attainted in a Premunire at the Kings ſuit, and his caſe was this. Within the Towne of Thetford there then was a cuſtome, that all Eccleſiaſticall cauſes riſing within the ſaid Town ſhould be determined before the Deane there, having a peculiar Eccleſiaſticall Juriſdiction, and that no inhabitant of the ſame Town ſhould be drawn before any other Eccleſiaſticall Judge, and that every perſon ſuing contrary to that cuſtome, the ſame being preſented before the Maior of Thetford, ſhould forfeit ſix ſhillings eight pence; and that an inhabitant of Thetford, for an Eccleſiaſticall cauſe riſing within Thetford, ſued another before the Biſhop of Norwich within his Conſiſtory court at Norwich: and this was preſented before the Maior of Thetford according to the cuſtome, whereby he forfeited ſix ſhillings eight pence. The ſaid Biſhop, cited the ſaid Maior for taking of the ſaid Preſentment Pro ſalute animæ to appear before him at his houſe at Horon in Suffolke, where the Maior appeared, and there the Biſhop ore tenus injoyned him, upon pain of Excommunication to annull the ſaid preſentment before a day. And for this offence he was attainted in a Premunire upon his confeſſion before Fitz James Chief Juſtice, and the Court of Kings Bench, upon the ſtatute of

d Raſt. pl. 429. b. & 430.

e 17 H. 7. of the report of Juſtice Spilman.

f Mic. 38 H. 6. coram Rege.

g Mic. 9 H. 7. coram Rege. Raſt. pl. 23. but this cauſe is entred. Trin. 9. H. 7. Rot. 37. coram Rege.

h 24 H. 8. tit. premunire, Brook 16.

Hil. 25 H. 8. coram Rege. Rot. Rich. Biſhop of Norwich his caſe.

of 16 R 2. the Record whereof we have seene. By which judgement two points are cleared: First, that the statute of Premunire extends to Ecclesiasticall courts within the Realme. Secondly, that after the King was in possession of his Supremacy, the Bishops incurred the danger of Premunire.

Trin. 36 H. 8. coram Rege. Rot. 9. the B. of Bangors case.

The Bishop of Bangor was attainted in a Premunire for holding plea of an Advowson, and of tithes severed from the nine parts.

D. & St. lib. 2. ca. 24. fo. 106. b. Lib. 2. ca. 23.

Saint Germin in his Book of Doctor and Student, who wrote after 26 H. 8. holdeth: That if a man maketh a promise for a temporall thing, and sweare to performe it, and doth it not; if he be sued for perjury in the Spirituall court, a Prohibition or a Premunire lyeth in that case. Also he saith: If a man be excommunicate in the Spirituall court for trespasse, or such other thing, as belongs to the Kings Crown and his Royall Dignity, &c. the party if he will, may have a Premunire fac. against him.

Br. tit. Premunire. 21. Temps. E. 6.

Brook reporteth, that Barloe Bishop of Bath and Wels, in the reigne of King E. 6. deprived the Deane of Wels, which Deanry was a Donative: and thereby incurred the danger of a Premunire.

1 Eliz. cap. 1.

By the statute of 1 Eliz. (which restoreth the ancient Jurisdiction Ecclesiasticall to the Crown) the Act of 1 & 2 Ph. & Mar. cap. 8. is repealed. But there is a speciall proviso in that Act of 1 Eliz. that it should not extend to repeale any Clause, Matter, or Sentence contained or specified in the said Act of 1 & 2 Ph. & Mar. which doth concerne matter of Premunire, but that so much of that, which concerneth any matter or cause of Premunire, should stand in force and effect. And that clause of the Statute of 1 & 2 Ph. & Mar. is this. That whosoever shall by any Proces obtained out of any Ecclesiasticall Court, within the Realme or without, by pretence of any spirituall jurisdiction, or otherwise, contrary to the lawes of the Realm, inquiet or molest any person, &c. for any Mannors, &c. parcell of the possessions of any Religious House, &c. shall incurre the danger of the Act of Premunire, in Anno 16 R. 2.

25 H. 8. ca. 20.

See the statute of 25 H. 8. which also hath reference to the said Act of Premunire, and is revived by 1 Eliz.

Trin. 29 Eliz. in Communi banco. Rot. 747. Tho. Stoughtons case.

Thomas Stoughton Parson of N. in Suffolke, brought a Writ of Premunire against R. T. upon this statute of 27 E. 3. for suing in the Court of Audience of the Archbishop of Canterbury, to impeach a judgement given in a Quare Impedit, before the Justices of Assise in the County of Suffolk, &c. the defendant pleaded not guilty, &c. And this (omitting many other things for this matter) shall suffice. And now let us perule the body of the Act.

¶ Trahe nulluy hors de realme.] Of this there is no question, being against the ancient law of the Realme alwayes in use; as by this Act appeareth. And this was a remedie for the first mischiefe.

¶ Ou des choses dont judgements fuer' rendus, &c.] This branch prohibiteth all forain suits, viz. in the Court of Rome, &c. for any thing whereof judgement was given in the Kings Court. And this was a remedy for the second mischiefe.

¶ Ou que sount en autre court a defaire ou impeacher les judgements rendue in le Court le Roy.] This is a remedy for the third mischief. For having by the second branch provided against forain suits to undoe, or impeach judgements in the Kings Court, this branch doth (as hath been said) extend to all Courts, which proceed by the rule of another law, or draw the party ad aliud examen; and therefore this branch doth extend to Ecclesiasticall Courts, to the Court of the Constable, and Marshall, to the Court of the Admiralty, and to the Court of Equity proceeding in course of equity: for it had been to no effect to have provided against forain suits, which were troublesome, tedious, and chargeable, and to have suffered the party to have attempted and prosecuted any thing at home within this realm,

to

to the prejudice and diſherſion of the King, and his Crown, and all his ſubjects, and to the ſubverſion of the Common law. And firſt we will ſpeak of the Court of Equity. This Court cannot proceed in courſe of equity after judgement at the Common law, for three reaſons. Firſt, for that it draweth the matter triable, and determinable by the Common law, ad aliud examen, viz. to a triall by witneſſes, which (as hath been ſaid) is contrary to the ancient law of the Realm, and againſt the Parvien of this ſtatute. Secondly, after judgment the parties ought to be at peace and quiet, for judicia ſunt tanquam juris dicta, and if the party againſt whom judgement is given, might after judgement given againſt him at the Common law, goe into court of Equity for matter in equity, there either ſhould be no end of ſuits, or every Plantif would leave the Common law, and begin in the Court of Equity, whither in the end he muſt be brought, and that ſhould tend to the utter ſubverſion of the Common law, as it is ſaid in the Act. Thirdly, the Court of Equity in the proceeding in courſe of equity is no Court of record, and therefore it cannot hold plea of any thing, whereof judgement is given, which is a judiciall matter of record. And this is the ancient law at all times uſed, as this Act ſpeaketh. As taking ſome few examples for many, both before, and after this ſtatute. 37 H. 6. 14.

In the caſe of Edmond Earle of Cornwall in Anno 6 E. 1. it appeareth, that after judgement given before Roger Loveday and Walter Winborn Juſtices of Oier and Terminer, againſt Walter Biſhop of Exeter and his Tenants, the ſaid Biſhop procured the Biſhop of Landaff in the Parish Churches of Cornwall and Devonſhire to pronounce ſentence of Excommunication by the ſentence of the Archbiſhop of Canterbury (which ſentence was had by the procurement of the ſaid Biſhop of Exeter) againſt all perſons of what eſtate, degree or dignity ſoever, that dealt in the proceedings, &c. againſt the ſaid Biſhop and his tenants before the ſaid Juſtices: and in this part of the record being in French, it is ſaid, La Corone, & la dignity noſtre ſeigniour le Roy ne doit per autre eſtre Juſtice ne guyne, &c. Et les choſes que ſont paſſes en ſa court per judgement, ou en auter manner, ne devient eſtre en autri court recrecees, &c. Out of this Record we may obſerve three things. Firſt, what the ancient law of this Realm was, before the making of this Act. Secondly, that [en autri court] which are the words of this Act, was taken to be another Court within the Realm. Thirdly, that the miſchief before this Act, was for ſuits in other Courts within this Realm, after judgements given in the Kings Courts. Read the whole Record, which beginneth thus. Cornub. Dominus rex mandat, &c. Anno 6 E. 1. the Earl of Cornwals caſe. Lanceſton in Theſaur.

And in 13 E. 3. there was a ſuit in the Court of Rome after judgement in the Kings Court, and in that Record it is ſaid, In regis contemptum, & Coronæ ſuæ præjudicium, ac judicii prædicti enervationem manifeſtam, &c. Ac quod judicia in curia Regis rite reddita fruſtra redderentur, niſi debitum ſortirentur effectum. Mich. 13. E. 3. In Communi Banco Rot. 40. Inter Johannem de Dingle & Mich. de Englis Bedf.

[a] Fleta who wrote before this ſtatute, ſaith, Judicia debent rata permanere, & firma conſiſtere, uſque ad condignam ſatisfactionem inviolabiliter obſerventur. *a* Fleta li. 6. ca. 36.

And as a Parime of the Common law in the judiciall Regiſter, fo. 12. 35. 41, &c. it is often ſaid, Ea quæ in curia domini regis rite acta ſunt, debitæ executioni demandari debent. Trin. 19 E. 3. Rot. 50. Coram Rege Iohn Boltons caſe.

Now let us ſee what hath been done ſince the Act. [b] The ſtatute of 4 H. 4. cap. 23. hath been recited before, which is a judgement of Parliament. [c] A judgment was obtained by covin and practice againſt all equity, and conſcience in the Kings Bench: for the Plantif retained by colluſion an Attorney for the Defendant, (without the knowledge of the Defendant, then being beyond ſea) the Attorney confeſſeth the Action, whereupon judgement was given, [d] the Defendant ſought his remedy in Parliament, and by Authority of Parliament power was given to the Lord Chancellor by adviſe of two of the Judges to hear, and order the caſe according to equity: which proveth that the Chancellour could not doe it of himſelf without higher Authority. Mich. 19 E. 3. Rot. 16. & Rot. 29. Alan de Conesburghs caſe. F. N. B. 169. f. 20 E. 3. eſſoin 24. 21 E. 3. 40. b. *b* 4 H. 4. ca. 23. *c* Paſc. 5 E. 4. Coram Rege inter Cobbe & Nore. *d* Rot. Parl. ſimile 3 H. 5. nu. 44. & 3 H. 6. nu. 22. § 21 E. 4. 37.

[c] No Injunction after verdict at the Common law is to be granted in Chancery, [e] if the Lord Chancellor ſhould grant an Injunction in that caſe the Judges ſaid, that

that if the Chancelor imprisoned the party for breach of the Injunction, they would grant an Habeas corpus and deliver him.

1 Decemb. 21 H.8. Art. 20. Amongst the Articles preferred to the King by Sir Thomas Moore Lord Chancelor of England and all the Privy Councel, and by Fitz-James Chief Justice, & Justice Fitz-Herbert against Cardinall Woolsey, one is in these words, [And the said Lord Cardinall hath examined divers and many matters in the Chancery, after judgement thereof given at the Common law, in subversion of your laws, and made some persons to restore again to the other party condemned that, that they had in execution by vertue of the judgement of the Common law] which I have seen in parchment under all their hands, and as yet to be seen.

Doct. & Stud. ca. 18. the book of diversity of Courts. If judgements given in the Kings Courts should be examined in Chancery, before the Kings Councell, or any other place, the Plaintif or Demandant should seldome come to the effect of their suit, nor the law should never have end, &c. See the diversity of Courts ca. Chancery.

Mich. 8. & 9 El. in the Kings Bench. Ralph Heydon Gent. was indicted of a Premunire upon the statute of 27 E. 3. for procuring of Sir Nicholas Bacon Lord Keeper of the Great Seal, to grant an Injunction in Chancery after judgement given in an Ejectione firme of lands in Hertfordshire. And the record saith, Quod prædictus Radus machinatus est antiquas leges, & consuetudines regni subvertere.

Trin. 21. El. in Comuni Banco Rot. 319. A writ of Premunire upon the said statute of 27 E. 3. by Richard Beans against Richard Lloyd, for suing before the President and Councell in Wales, after judgement given in the Court of Common Pleas, in an Action of debt for forty and two pound ten shillings, in subversionem legum antiquarum, &c.

Pasch. 27. El. in the Kings Bench. Peter Dewse was indicted for procuring of Sir Thomas Bromly then Lord Chancelor, to grant an Injunction in the Chancery after a Judgement given in an Ejectione firme.

Trin. 30 El. in the Kings Bench. Diversity of Courts. ca. Chancery. John Heal of the Inner Temple London Esquire, was indicted of a Premunire, for procuring a suit in Chancery after a judgement given at the Common law, contrary to the statute of 27 E. 3. And the councell of Heal took two exceptions, one, that the Court of Chancery was not within the statute of 27 E. 3. another, that one of the parties to the suit in Chancery was named in one place by one name of baptisme, and in another part of it by another. The Court resolved that the Court of Chancery was within the statute of 27 E. 3. but found the other exception concerning misnaming to be true. And therefore they quashed the Indictment, but made a memorandum indorsed upon the back of the indictment, that it was overthrown for mistaking a name, and not for the matter.

Mic. 39 & 40 El. See the Fourth part of the Inst. cap. Court of Chancery. Thomas Throckmorton exhibited a bill in the Chancery against Sir Moyl Finch after judgement given against him in the Court of Exchequer upon apparant matter of equity. Upon which Bill the Defendant demurred in law, and for that Sir Thomas Egerton then Lord Keeper inclined to rule over the demurrer, saying that he would not meddle with the judgement, but punish the corrupt conscience of the Defendant, in relieving the Plaintif in equity: Upon a petition to Queen Eliz. (who ever favoured the due proceeding of her laws,) she referred the consideration of the Demurrer to all the Judges of England, who hearing Councell learned on both parts, and upon view of Presidents in the time of H. 8. and since of Injunctions granted after judgements, and finding very few of them to warrant that which had been affirmed, and none of them to be done by the advice of any of the Judges, they all after divers hearings, and conferences, and consideration had of the laws and statutes of the Realm, unanimously resolved, that the Lord Keeper could not after judgement given relieve the party in equity, although it appeared to them, that there was apparent matter in equity. And amongst others, the Judges gave this reason, that if the party against whom judgement was given, might after judgement given against him at the Common law, draw the matter into the Chancery, it would tend to the subversion of the Common law, for that no man would sue at the Common law,

law, but originally begin in Chancery, ſeeing at the laſt he might be brought thither, after he had recovered by the Common law; and thereupon they all certified, that the Demurrer was good, and that Sir Moyl Finch the Defendant ought not to anſwer.

An Information upon this ſtatute of 27 E. 3. againſt Sir Anthony Mildmay, for that he and other Commiſſioners of Sewers did impeach a Judgement in the Kings Bench: he purchaſed a pardon from the King, and pleaded it. Hil. 12 Jac Regis Coram Rege.

See a Priuy Seal bearing Teſte 18 Julii, Anno Domini 1616. to the contrary, obtained by the importunity of the then Lord Chancellor being vehemently affraid: Sed judicandum eſt legibus, and no Preſident can prevail againſt an Act of Parliament. And beſides, the ſuppoſed Preſidents (which we have ſeen) are not authenticall, being moſt of them in torn papers, and the reſt of no credit.

¶ Eient jour contenant le ſpace de 2 moys per garniſhment a faire a eux, &c.] By this it appeareth that a Premunire lyeth as well for the party, as for the King, and they both may joyne in one writ. 44 E. 3. 7. 36. 39 E. 3. 7. 7 E. 4. 1. 27 H. 6. 5. 36 H. 6. 30.

* If the Defendant come not at the day, &c. by the expreſſe letter of the law iudgement ſhall be given againſt him according to this Act. This ſuit need not be againſt them by originall writ, but if the Defendant be In Cuſtodia Mareſchalli, the ſuit may be againſt him by bill, becauſe the end of the giving of the two months was, that they ſhould have notice, which is ſatisfied, and therewith agreeth the Preſidents; and the Defendant cannot be ſued in any other Court, when they are In Cuſtodia Mareſchalli. See the ſtatute of 18 El. cap. 5. but that ſtatute extends to common Informers, and not when the ſuit is commenced by the party grieved. * 43 E. 3. 6. 41 E. 3. 7. 2 R. 2. 17. 27 H. 6. 5. 22 H. 8. Tit. Præm. Br. 1. Tr. 39 E. 3. Rot. 95. Coram Rege. 39 E. 3. 37. 30 E. 3. 11.

a But if the Defendant appear and plead, and the iſſue be found againſt him, or if he demur in law, &c. judgement ſhall be given againſt him, that he ſhall be out of protection, &c. And ſo hath this ſtatute been interpreted, and judgement given accordingly. Peruſe well the words of this Act for this point, and ſee the book in 8 H. 4. 6. 44 E. 3. 36. Forebys caſe. a 8 H. 4. 6. Lib. 11. fo. 34. b. in Alex. Poulters caſe.

By the ſtatute of 38 E. 3. cap. 2. the Defendant ought to appear in perſon, and therefore he cannot appear by Attorny without a ſpeciall writ out of the Chancery: and this Act doth bind as well thoſe that are Lords of Parliament, as others. 39 E. 3. 7. 9 E. 4. 2. 15 H. 7. 9. F. N. B. 26. n

¶ Avant le Roy & ſon Councell.] Here Councell cannot be taken, as moſt commonly it is, for his Judges of his Courts of Juſtice, who are ſaid to be of his Councell for proceedings in courts of Juſtice, becauſe the Courts of Juſtice are hereafter in this Act named: neither doth it intend the Kings Priuy Councell, but the King and the Lords of Parliament in Parliament, which is a Court of Juſtice. 27 H. 6. 5. 2 R. 3. 10.

See the Firſt part of the Inſtitutes, Sect. 164. Veigne les Burgeſſes al Parlement. There is Commune Concilium, Magnum Concilium, Privatum ſeu continuum concilium, and Concilium Juſticiariorum, le Councel des Juſtices. The King is armed with divers Councels.

¶ Ils, lour procurators, Attornies, Executors, Notaries, & Mayntainors.] Note by this Act the Procurers, Attornies, Executors, Notaries, and Maintainers ſhall have the ſame puniſhment, that the Principall ſhall have. Note in the ſtatute of 2 R. 2. this word [fautors] crept in, a word (derived à favendo) of a large extent, as it was conſtrued in the reign of H. 8. Scanf. pl. Cor. 44 f. 44 E. 3. 7.

The Plantif may chooſe whether he will make them all principals, or the one principall, and the other acceſſories, but the damages ſhall be ſeverally taxed. 36. H. 6. 30.

He that procures one to ſue to the Court Chriſtian, ſhall forfeit as much as he that ſueth, and is principall as well as the other, and are in equall degree of Premunire: but if they both be indicted, the one of the act, and the other of the 42 E. 3. 7. 8 Rot. 3. Prem. 12. 8 H. 4. 6. pl. com. 97. b.

procurement, and he that is charged with the procurement is found guilty, and the other by another enquest is found not guilty, judgement shall never be given against him, which was indicted of the procurement, because he cannot be an offender, but in respect of the offence of the other.

See Littleton Sect. 199. and the 1. part of the Institutes the same Sect. Lib. 7. fo. 14. in Calvins case. 25 E. 3. ca. 2. See 5 El. ca. 1.

¶ Hors de la protection le roy.] By these words the persons attainted in a writ of Premunire are disabled to have any action or remedy by the Kings law, or the Kings writs; for the law and the Kings writs are the things whereby a man is protected and aided, so as he that is out of the Kings protection, is out of the aid and protection of the law.

But by the statute of 25 E. 3. it is provided, that he that purchaseth provisions to Abbies or Priories shall be out of the Kings protection, and that a man may doe with him, as with the enemies of the King and his Realm, and that he, that shall commit any thing against such provisors in body or goods, or other possessions, shall be excused against all people.

34 H. 8. forfeit. Br. 101. Pasch. 21 El. resolution of the Judges in Trudgyns case. Dier manuscript. Vide before. 25 E. 3. Verb. Et soit assavoir.

¶ Et lour terres, beins, & chateux forfait ou Roy.] This is intended of the lands that he hath in fee simple, or for life, which the Delinquent might lawfully forfeit, and not lands in tail: for tenant in tail shall forfeit only for term of his life, for that was all he could lawfully forfeit at the making of this statute, either in case of Treason or Felony. And so it was resolved by the Judges in the case of Trudgyn of Devonshire, who was attainted of a premunire upon the statute of 13 El. cap. 2.

Nota, This is a new kind of forfeiture given by this law, and is penall, and cannot by equity extend further then the records, and therefore this Act extendeth not to the forfeiture of Fairs, Markets, Rents charges, Rent seck, Warrens, Annuities, or any other hereditament that is not within this word [terre.]

¶ Lour corps imprison, & rents al volunt le Roy.] The greatnesse of these punishments do shew the greatnesse of the offence.

16 R. 2. ca. 5. Examples of these are quoted before.

It is to be observed, that the said statute of 16 R. 2. is strictly penned against offenders. For first, it extendeth to all persons of what quality, or ser soever, the words be [if any.] 2. To all Courts of what Jurisdiction soever, and whether holden by right or by wrong, In curia Romana, seu alibi, which word (alibi) is a word of a large extent, as before it appeareth. 3. To all things whatsoever: [Where any thing,] which words be as generall as can be. 4. Not only against the King, his Crown and dignity, but against the kingdome also: against the King, his Crown, and regalty or Realm. 5. This Act extendeth not only to procurers, abbetters, maintainers, counsellors, &c. which are known words in law, but to favourers, fautores, which word was largely extended in the reign of H. 8. Whereby it is to be observed how dangerous it is to bring new or unusuall words into any Act of Parliament, especially into such as be so penned: for there it appeareth that Cliff being a Parson of a Church granted to the Cardinall an annuity, so long as he should be Legate, ut decentius & sublimius se gereret in authoritate sua Legantina, which the Cardinall had by Bull, and paid to him ten marks in name of season, and he was adjudged a fautor. But such evasions were found out of this and other statutes, as were made against usurpations and incrochments upon the good and ancient Common law, as divers and many statutes were made from time to time to meet with such evasions, which being many, (and others which concern the offence of premunire) we will but name, and leave the reader to peruse the same at large, wherein (as we conceive it) he shall find a great light, by that which hath been said, viz. 25 E. 3. ca. 22. 25 E. 3. Statu. de provisoribus. 38 E. 3. ca. 1, 2, 3, 4. 3 R. 2. cap. 3. 7 R. 2. ca. 12. 12 R. 2. ca. 15. 13 R. 2. Stat. 2. ca. 2. 16 R. 2. ca. 5. 2 H. 4. ca. 3. & 4. 6 H. 4. cap. 1. 7 H. 4. ca. 6. & 8. 9 H. 4. ca. 8. 3 H. 5. cap. 4. 24 H. 8. ca. 12. 25 H. 8. ca. 19, 20, 21. 26 H. 8. cap. 15. 28 H. 8. cap. 10. 35 H. 8. ca. 1. Note, Queen Mary repealed

Vide Justice Spilmans Report. Mich. 21. H. 8. Cliffs case.

repealed all offences made to be in the caſe of præmunire ſince the firſt day of the firſt year of H. 8. but ſome of them are revived by the ſtatute of 1 El. ca. 1. But in all Queene Maries time, the ſtatutes made concerning the offences of præmunire before the reigne of H. 8. were neither repealed nor altered, but (as hath been ſaid) allowed of in Queen Maries time. 1 & 2 Ph. & Mar. ca. 8. 1 El. ca. 1. 5 El. ca. 1. 13. El. cap. 1, 2. 8. 27 El. ca. 2. 21. Jac. ca. 3. 1 Mar. ca. 1.

And where the ſtatute of 25 E. 3. De Proviſoribus provideth, that certain offenders againſt that Act, ſhall before they be delivered, make full renunciation, &c. becauſe we deſire that our ſtudent may in all things underſtand what he reads: It is to be known, that as well before that ſtatute, viz. in the reigns of E. 1. E. 2. as after, the form of renuntiation was to this effect. I renounce all the words compriſed in the Popes Bull to me made of the Biſhoprick of A. (or the like) the which be contrary, or prejudiciall to the King our Soveraign Lord, and to his Crown, and of that I put my ſelfe humbly in his Grace, praying to have reſtitution of the temporalities of my ſaid Church, &c. Whereby it may appear what the law was in that caſe before 25 E 3. And albeit theſe laws be very ſevere, eſpecially againſt the Buls, &c. of the Pope, and forrain juriſdiction, and though Queen Mary reſtored his ſupremacy in ſuch ſort as hereafter appeareth, yet would ſhe not repeal the ſaid ſtatutes of Proviſion and Præmunire, but provided that they ſhould ſtand in force. See the ſtatute of 1 & 2 Ph. & Mar. whereby it is enacted, That whoſoever ſhould by any proces obtained out of any Eccleſiaſticall Court within this Realm, or without, or by pretence of any ſpirituall juriſdiction * or otherwiſe, contrary to the lawes of this Realm, inquiet, or moleſt any perſon, &c. ſhould incur the danger of the Act of Premunire made in the ſixteenth year of the reign of King R. 2. &c. And by another branch in the ſame Act it is enacted, That all Buls, Diſpenſations, and priviledges not containing matter contrary, or prejudiciall to the authority, dignity or preheminence royall of the Realm, or to the laws of this Realm now being in force, and not in this preſent Parliament repealed, may be put in execution. And laſtly, by the ſame Act, it is declared and enacted, That neither any thing contained in the body of the ſaid ſtatute, or in the Preamble thereof, ſhall be conſtrued, or expounded to diminiſh, or take away any of the liberties, priviledges, prerogatives, preheminencies, authorities or juriſdictions which were in the Imperiall Crown of this Realm, or belonged to the ſame before the twentieth year of H. 8. and the Popes Holines to have ſuch authority, preheminence, and juriſdiction, as his Holineſſe uſed, or might lawfully have uſed by authority of his Supremacy the ſaid twentieth year of H. 8. within this Realm of England, without diminution or enlargement of the ſame, and none other. Whereby it appeareth how carefull the State was in Queen Maries time to preſerve the Prerogative of the Crown, and the ancient lawes of the Realm, and did at that time ſo cautiouſly reſtore the Supremacy of the Pope, ſecundum quid, but not ſimpliciter, and bounded his Supremacy within ſtrait and legall limitations, as by the ſaid Act appeareth.

Dier Manuſcrip. Hil. 1 El. le caſe de Chriſtoforſon Eveſque de Chicheſter.

1 & 2 Ph. & Mar. ca. 8.

* Nota.

See the ſtatutes which inflict the puniſhment of præmunire, viz. 2 R. 2. c. 12. 3 R. 2. ca. 3. 7 R. 2. ca. 12, 24 H. 8. ca. 12. 25 H. 8. ca. 19, 20. 1 El. cap. 1. 26 H. 8. cap. 15. 28 H. 8. ca. 16. 1 & 2 Ph. & Mar. cap. 1. 8 El. cap. 1. 13 El. ca. 2. 8. 39 El. ca. 11. 27 El. ca. 2. See the Fourth part of the Inſtitutes, cap. Chancery, the Articles at large againſt Cardinall Wooleſey. Artic. 7.

We have been the longer concerning caſes of Præmunire: Firſt, for that they be matters of great weight, and neceſſary to be known, and we with that the offence may never be committed. And ſecondly, for that Maſter Stanford hath in effect but named a Præmunire.

Stan. pl. cor. 44 E.

CAP. LV.

Of Propheſies.

33 H.8.cap.14. 1 E.6.cap.12. Nota. 1 Mar.ſtat.unicum, Seſſione prima. 5 Eliz.cap.15. Minus imperanti melius paretur. * Nota. The like Act was made, 3 & 4 E.6. ca.15,expired.

PRopheſies upon declaration of Armes, Fields, Names, Cogniſances, or Badges, were made felony without the benefit of Clergy: but this Act is twice repealed by generall words of all Felonies made by any ſtatute ſince the firſt year of H.8.

In Anno 5. Eliz. a more moderate Statute was made againſt Propheſies by Writing, Singing, or other open Speech, or Deed, by the occaſion of any Armes, Fields, Beaſts, Badges, or other like things accuſtomed in Armes, Cogniſances, or Signets; or by reaſon of any time, year, or day, name, bloodſhed or warre, * to the intent thereby to make any rebellion, inſurrection, diſſention, loſſe of life, or other diſturbance within this Realm or other the Queens Dominions. For the firſt offence impriſonment of his body by the ſpace of a year without baile, and forfeit to the Queene and Informer, ten pound. And for the ſecond offence, impriſonment during life without baile, and forfeit to the Queen all his goods and chattels, reall and perſonall: but he muſt be therefore impeached or accuſed within ſix Moneths next enſuing the offence by him done. A juſt and neceſſary limitation, and the rather, for that the offence may be committed by bare words. This offence is to be heard and determined before Juſtices of Aſſiſe, Juſtices of Oier and Terminer, and Juſtices of Peace.

See hereafter the Chapter of Newes, and the Second part of the Inſtitutes, W. 1. cap. 33. He that hath read our Hiſtories ſhall finde, what lamentable and fatall events have ſaine out upon vain Propheſies carried out of the inventions of wicked men, pretended to be ancient, but newly framed to deceive true men: and withall, how credulous and inclinable our countrymen in former times to them have been, we will ſet down the truth concerning the ſame.

Certaine it is, that to foretell of things to come, is a prerogative appropriated to the Holy Ghoſt; and that the Devill cannot prædicere, foretell of things to come, which notwithſtanding, S. Auſtin did ſometime hold that he could. But afterwards juſtly retracted it in theſe words, Rem dixi occultiſſimam audaciore aſſertione, quam debui, &c. certiſſimum eſt Dæmones non præſcire.

Auguſt. in lib. Retract.

Now for the predictions and foretellings of the Sibyls being Gentiles, ſo long before the Incarnation of our Saviour Chriſt: and more directly and particularly of thoſe high myſteries of the Incarnation and Paſſion of Chriſt, the coming of Antichriſt, the ſubverſion of Rome, and the end of the world, they are by the true Prophets of Almighty God, who ſpake by the Holy Ghoſt, well diſcovered; that while the Church was in her Cradle, theſe predictions were invented and fathered upon the Gentiles; to the intent to make the doctrine of the ſaid high Miſteries of the Goſpell the more credible amongſt the Gentiles. And if any ſuch predictions had been by the ſaid Sibyls, out of queſtion thoſe great Lights of Nature amongſt the Gentiles, Plato, Ariſtotle, Theophraſtus, or ſome other of thoſe great Philoſophers, that with great alacrity dived into the ſecrets of all kindes of learning, would have found them out, and made ſome mention of them. But beſides the ſaid [a] diſcovery, ſuch predictions by the Gentiles and Heathen perſons are [b] againſt the word of God.

[a] Cauſabone Exercit. 1. ad apparatum Annalium, cap. 10.
[b] Epheſ.c.3.v.9. Col.cap.1.v.26. Rom.ca.16.v.25.
[c] Acts ca.1.v.7. Mat.24.36. Mark 13.32.

Alſo predictions either of the time of the end of the world, or that it is at hand, is not lawfull. For the firſt, [c] ſee the firſt of the Acts, It is not for us to know

the

the times and ſeaſons which the Father hath put in his own power, &c. For the ſecond, ſee the Second Epiſtle to the Theſſalonians. Ibeſeech you brethren &c. that you be not ſhaken in minde, or troubled, &c. as though the day of Chriſt were at hand, let no man deceive you by any meanes. 2 Theſſ.c.2.v.1,2

We have the rather ſaid hereof thus much, for that we have heard divers men boldly and confidently upon their Numerall calculation to have erred herein.

CAP. LVI.

Of Approver.

AProver, or Approver, in Latin Probator, is a perſon indicted of Treaſon or Felony in priſon for the ſame, and not diſabled to accuſe: he may [a] upon his arraignment, before any plea pleaded, and before competent Judges [b] confeſſe the Indictment, and take a corporall oath to reveale all treaſons and felonies, that he knows, and pray a Coroner, before whom he is to enter his appeale or accuſation againſt all thoſe that are participes criminis, or of his ſociety in committing of treaſon or felony contained in the Indictment, thoſe partners being within the Realme: and if upon his appeale [c] all thoſe partners be convicted, the King ex merito juſticiæ, is to pardon him. But it is in the diſcretion of the Court, either to ſuffer him to be an Approver, or after his approvement to reſpite judgement and execution, untill he hath convicted all his partners.

Parl.28 E.1.ca. Nota, for confronting.
[a] 9 H.5. cor.440. 21 E.3.18. 19 H.6.47. 2 H.7.3. 12 E.4.10. 3 H.6.50,51.
[b] 1 H.5.cor.441. 3 H.6.50,51. in Bank le roy. Paſch.2 H.4. coram Rege pl. 6.
[c] 21 H.6.29.b. & 34.b.

A Prover.] [d] He is by Bracton called Probator, by Britton, Provor, by the Mirror Prover and Approver: and his name putteth him in minde of his duty, viz. to prove and approve his accuſation or appeale in every point, for [e] any faylet of truth diſableth him in omnibus. And as he muſt affirme the truth, and the whole truth, before the Coroner and his appeale: ſo in the rehearſall of the appeale before the Juſtices, it muſt agree with the appeale, 26 Aſſ. p. 19. & Bracton ubi ſupra. [f] In one Record I finde him called Appellator.

[d] Bract.lib.3. fo.122.b.& 152. &c. Britton.fo.7.11. 17.48. Mirr.cap.1.§.13. cap.3.exec.al. provors, cap.5.
[e] 25 E.3.42. 21 H.6.34. 22 E.3.cor.460. 26 Aſſ.p.19.
[f] Paſch.2 H.4. coram Rege.6.

℄ Perſon.] This extendeth not to a Peer or Lord of Parliament, for it is againſt Magna Carta. cap. 29. for him to pray a Coroner.

[g] A man attainted of treaſon or felony cannot become an Approver, becauſe (as the book ſaith) he is Hors de la ley. Alſo though he be indicted, yet if he be out of priſon, he cannot approve.

[g] 11 Aſſ.pl.17. 19 E.2.cor.387. 19 E.3.ibid.443. 17 E.3.13. 21 E.3.18.

[h] The Mirror ſaith, that Women, Infants, Idiots, Lepers, or Profeſſors in order of Religion, or Clerks, or perſons attainted of felony, or Non compos mentis, cannot be Approvers: and Stanford addeth men above the age of 70, or maymed; becauſe ſome of them cannot take an oath, and none of them can wage battell.

[h] Mir.ca.1.§.13. Stanf.pl.cor. 140.d.

℄ Indicted.] [i] For in any appeale either by Writ or Bill the defendant ſhall not become an Approver: and before indictment, no perſon can approve, becauſe if his approvement be falſe, no judgement (whatſoever he confeſſed) can be given againſt him, unleſſe he be indicted, [k] and no judgement can be given againſt him if his appeal be falſe, but of the offence contained in the Indictment, and ſo are the books to be underſtood.

[i] 43 Aſſ.39. 15 E.3.cor.113. 11 H.7.5.
[k] 25 E.3.39.

[l] If one be indicted and approve, if after an appeale be ſued againſt him, the approvement ceaſeth.

[l] 8 H.5. cor 442

℄ Of treaſon or felony.] And that is only of that treaſon or felony that is contained in the Indictment, as hath been ſaid. [m] See Trin.3 H.4.Rot.19. Coram Rege Hertford. Probator in duello devicit appellat', de alta proditione, pro

[m] 19 H.6.4. 12 E.4.10. 6 H.6.cor.131. 19 E.2.cor.387.

pro quo devictus ſuſpenditur, decapitatur, & quarteria ſua dividuntur. Et ſimile ibid. Anglia.

a 6 H.6.ubi ſup. 21 E.3.fo.18. V.3.H.6.51,52.

¶ In priſon.] a Albeit he be indicted, yet if he be at large, and not in priſon, he cannot appꝛove, as beforꝛe is ſaid.

b Bract. ubi ſup. 9 H.4.1. 2 H.4.19. 44 E.3.44. Lib.10.fo.75.b.

¶ Competent Judge.] b As Juſtices of the Kings Bench, Juſtices of Oier and Terminer, and of Gaole delivery, but not Juſtices of Peace, becauſe they have no authoꝛity by their Commiſſion to aſſigne a Coꝛoner. And by the ſame reaſon the Lord High Steward of England cannot aſſigne a Coꝛoner in caſe of treaſon oꝛ felony.

12 E.4.10.

¶ Corporall oath.] Though the Oath be generall of all treaſons and felonies, yet in courſe of law no appꝛovement can be, but of the offence contained in the Indictment, as hath been ſaid. And this Oath and the accuſation of himſelf make his appeal oꝛ accuſation of another of the ſame crime, to amount in law to an Indictment.

21 H.6.34,35.

40 Aſſ.39. 10 E.4.14.

¶ Particeps criminis.] Foꝛ it cannot be of another treaſon oꝛ felony then is contained in the Indictment.

1 E.3.17. 1 Aſſ p.2.

¶ Within the Realme.] Foꝛ if it be out of the Realme, it wanteth triall, and therefoꝛe the accuſation oꝛ appeale not to be allowed.

26 Aſſ.19. 8 H.5.cor.459. 21 H.6.34. 12 E.4.10.

¶ Ex merito juſtitiæ.] And the reaſon is, foꝛ that he riddeth the countꝛy of wicked and hurtfull miſdoers: whereby the Kings peace is kept, and the Subject enjoyeth his own in quiet. And therefoꝛe the King doth in the meane time giue him wages.

Mich. 39 E.3. coram Rege Rot.97. Suff.

A man became an Appꝛover and appealed five, and every of them joyned battell with him. Et duellum percuſſum fuit cum omnibus, & Probator devicit omnes quinque in duello, quorũ quatuor ſuſpendebantur, & quintus clamabat eſſe clericum, & allocatur; & Probator perdonatur: ſo as the appꝛover did and ought to fight in that caſe with all the appellees. But if there be two oꝛ moꝛe appꝛovers againſt one man of one felony, and he joyne battell with them all, and vanquiſh the firſt, he is acquited againſt the other. Concerning the Pꝛoces upon an appꝛovement, and other incidents, you may read in Mr. Juſtice Stanford, which need not heare to be rehearſed.

7 E.3.7. 11 H.4.91.b. Of battell ſee more here, Cap. Single combat, and the ſecond part of the Inſtitutes, Weſtm. 1. cap.40. * 47 E.3.5.

* If the appellee joyne battell, oꝛ plead not guilty, and after the King pardoneth the appꝛover, the appellee ſhall be diſcharged, and ſhall not be arraigned at the ſuit of the King.

Stanf.pl.cor. 142.

¶ Convicted.] The appellee may chooſe either to wage battell with the appꝛover, oꝛ to put himſelf upon the countrey; and if the appellee be found guilty by verdict, it ſerveth as well foꝛ the appꝛover, as if he had been overcome by battell. And therefoꝛe the Book in 19 H.6.35. is miſpꝛinted, oꝛ miſrepoꝛted: and the note of Fitzh. in abꝛidging the caſe, tit. Coron.pl.6. in the end, is againſt law, Vid. Rot. Parl. 17 E.3.nu.36.

19 H.6.35.a. Rot. Par. 17 E.3. nu.36.

CAP.

CAP. LVII.

Of Appeals.

OF Appeals we have ſpoken in the First and ſecond parts of the Inſtitutes, and you may read thereof in my Reports, Lib. 4. fo. 40,41,42,&c. Lib. 5. fo. 105. 111. Lib. 6. fo. 44, 80. Lib. 7. fo. 13.30. Lib. 9. fo. 13.119. Whereunto we will adde a [b] caſe which was adjudged in an appeal, where the caſe, as touching the point of the appeal, was thus. Thomas Burghe, brother and heire of Henry Burghe brought an appeale of murder againſt Thomas Holcroft, of the death of the ſaid Henry: The defendant pleaded, that before the Coroner he was indicted of Manſlaughter, and before Commiſſioners of Oier and Terminer, he was upon that Indictment arraigned, and confeſſed the Indictment, and prayed his Clergie, and thereupon was entred Curia adviſare vult, and concluded, and demanded judgement, if that appeal the plaintife againſt him ought to maintain: whereupon the plaintife demurred in law. And in this caſe three points were adjudged by Sir Chriſtopher Wray, Sir Thomas Gawdie and the whole Court.

First part of the Inſtitutes, §. 189, 500, 501. Second part of the Inſtitutes, in Mag. Cart. ca. 34. W. 1. ca. 14. fo. 460. Cuſt. de Norm. cap. 68.

[b] Paſch. 20 Eliz. in the K. Bench. Tho. Holcrofts caſe, and after, viz. Mich. 33. & 34 Eliz. between Kath. Wrote, late the wife of Rob. Wrote, Plaintiff in an Appeale againſt Tho. Wiggs def. coram Rege, for the death of her husband, reſolved againe accordingly.

First, that the matter of the Barre had been a good Barre of the appeale by the Common law, as well as if the Clergie had been allowed: for that the defendant upon his confeſſion of the Indictment had prayed his Clergy, which the Court ought to have granted, and the deferring of the Court to be adviſed, ought not to prejudice the party defendant, albeit the appeale was commenced before the allowance of it.

The Second point adjudged was, that this caſe was out of the Statute of 3 H. 7. for that the words of that Act are,

3 H. 7. cap. 1.

If it fortune that the ſame Felons and Murderers, and Acceſſories ſo arraigned, or any of them to be acquited, or the principall of the ſaid felony, or any of them to be attainted, the wife or next heire of him ſo ſlaine, &c. may have their appeal of the ſame death and murder againſt the perſon ſo acquited, or againſt the ſaid principals ſo attainted, if they be alive, and that the benefit of his Clergie thereof before be not had.

And in this caſe the defendant Holcroft, was neither acquited nor attainted, but convicted by confeſſion, and the benefit of Clergy prayed, as is aforeſaid. So as the Statute being penall concerning the life of man, and made in reſtraint of the Common law, was not to be taken by equity, but is caſus omiſſus, and left to the Common law.

As to the third it was objected, that every plea ought to have an apt concluſion, and that the concluſion in this caſe ought to have beene, Et petit judiciũ ſi prædict. Thomas Holcroft iterum de eadem morte, de qua ſemel convictus fuit, reſpondere compelli debeat. But it was adjudged that either of both concluſions was ſufficient in law: and therefore that exception was diſallowed by the rule of the Court.

Nota, the ancient law was, that when a man had judgement to be hanged in an appeal of death, that the wife, and all the bloods of the party ſlaine ſhould draw the defendant to execution. And Gaſcoigne ſaid, Iſſint fuit in diebus noſtris.

11 H. 4. 11. Pl. com. 306. b.

Richardus de Crek appellat quinque pro felonia, & offert diſrationicinare per corpus ſuum contra quemlibet eorum ſeparatim. Ipſi petunt ſe allocari, quod ubi appellans dicit in appello ſuo, quod ipſi fregerunt oſtium Bracini, & non ſpecificat ex parte domus illius prædictum oſtium ſcitum fuit, & petunt judicium. Et Joh. Wanton unus defendent defendit feloniam, & totum, & paratus eſt defendere per corpus

Trin. 10 E. 1. in Banco, Rot. 30. Norff.

corpus ſuum ſicut curia conſideraverit. Ricus dicit quòd non poteſt pugnare contra prædictum Johannem, eo quod ipſe mahematus eſt in humero ſuo dextro. Et prædictus Johannes petit judicium deſicut prædictus Ricus appellando ipſum optulit diſrationare prædictum Robertum verſus ipſum tanquam felonem prout cur conſider per corpus ſuum, & nullam fecit mentionem de aliquo Mahemio, unde petit judicium de appello iſto. Et ideo Conſideratr eſt tam ad calumpniam prædicti Henr. & aliorum, quàm prædicti Johannis, quòd appellum ejus nullum. Set pro rege inquiratur rei veritas, &c.

Nota how the concluſion of the appeal of felony ought to be, when the Plaintif is mayhemed and cannot make tryall by battail.

* See before c. 1. high treaſon fo. 6. 1 H. 4. ca. 14. Glanv. li. 14. c. 1. Bracton lib. 3. fo. 118, 119. Britton cap. 8. & 29. Fleta lib. 1. ca. 21. The Mirror cap. 2. §. 11. Fat. 25 E. 3. part. 1. m. 16. Mich. 4 H. 4. Coram Rege Rot. 22. & c. 8 H. 6. ca. 10. F. N. B. 115. Lib. Intrat. Raſt. fol. 122.

* Where lay an appeal of high treaſon by the Common law either in Parliament before the ſtatute in 1 H. 4. ca. 14. or in ſuch of the Kings Courts as have juriſdiction thereof tryable by battail or verdict: and this appeareth by all our ancient Authors, and divers records, and ſee in Bracton fo. 119. a. What pleas the Defendant in the appeal of treaſon may have, to diſable the Plaintif to maintain his appeal, ſee Fleta ubi ſupra, & Britton ubi ſupra.

CAP. LVIII.

Of Treaſure trove.

Theſaurus inventus.

Cuſtum. de Nor. cap. 18.

TReaſure trove is when any gold or ſilver, in coin, plate or bullyon hath been of ancient time hidden, whereſoever it be found, whereof no perſon can prove any property, it doth belong to the King, or to ſome Lord or other by the Kings grant, or preſcription.

The reaſon wherefore it belongeth to the King, is a rule of the Common law; That ſuch goods whereof no perſon can claim property belong to the King, as wrecks, ſtrays, &c. Quod non capit Chriſtus, capit Fiſcus. It is anciently called * Fyndaringa, of finding the treaſure. And now let us peruſe this deſcription.

* Inter leges H. 1. ca. 11.

¶ Gold or ſilver.] For if it be of any other metall, it is no treaſure: and if it be no treaſure, it belongs not to the King, for it muſt be Treaſure trove.

It is to be obſerved, that veyns of gold and ſilver in the grounds of ſubjects belong to the King by his Prerogative, for they are royall mines, but not of any other metall whatſoever in ſubjects grounds.

Pl. Com. In caſe de Mines per totum. Vid. Bract. li. 2. fo. 222. Auri fodina, & argenti fodina. Fleta lib. 4 ca. 19. Rot. Parl. 3 R. 2. nu. 42. 27 Aſſ. p. 19.

¶ Whereſoever.] [a] Whether it be of ancient time hidden in the ground, or in the roof, or walls, or other part of a caſtle, [b] houſe, building, ruines, or elſewhere, ſo as the owner cannot be known.

¶ Whereof no perſon can prove any property.] For it is a certain rule, [c] Quòd theſaurus non competit regi, niſi quando nemo ſcit qui abſcondit theſaurum.

[a] Bract. l. 2. fo. 120. li. 3. 120. Britton fo. 3. b. 7. b. 26. b. 71. b. Mir. ca. 1. §. 3. & §. 13. ca. 3. §. iſto. Glanv. l. 1. ca. 1. li. 14. ca. 2. [b] In bundell Inquiſit. 32 E. 3. in

¶ Of ancient time hidden.] [d] Eſt autem theſaurus vetus depoſitio pecuniæ, &c. cujus non extat modo memoria, adeo ut jam dominum non habeat.

¶ Belong to the King] [e] Where of ancient time it belonged to the finder

Abbathia Sanctæ Mariæ Eborum. Bract. ubi ſupra. Non refert in quo loco hujuſmodi Theſaurus inveniatur. [c] 22 H. 6. Cor. 446. [d] Bract. Ubi ſupra, and the other ancient Authors agree thereunto. [e] Glanv. li. 1. c. 1. li. 14. ca. 2, 8 E. 2. Cor. 436. 22 E. 3. ibid. 241.

finder, as by the said ancient Authors it appeareth. And yet I find that before the Conquest, Thesauri de terra domini regis sunt, nisi in Ecclesia, vel Cœmeterio inveniantur; & licet ibi inveniatur aurũ, regis est, & medietas argenti est medietas Ecclesiæ, ubi inventum fuerit, quæcunque ipsa fuerit, vel dives, vel pauper.

¶ By the Kings grant or prescription.] 21 H. 6. tit. Prescription, 422 E.3. Cor. 241. 1 H. 7. 33. 9 H. 7. 20. 46 E. 3. 16. Stanf. pl. Cor. 39. b. Lib. 5. fo. 109. b.

¶ The punishment of him that concealeth, &c. it.] It appeareth by Glanvill, and Bracton also, that occultatio thesauri inventi fraudulosa, was such an offence, as was punished by death. But it hath been resolved, that the punishment for concealment of Treasure trove, is by fine and imprisonment, and not * of life and member. Glanvill ubi sup. Bracton and the other Authors, ubi supra. * 22 Ass. p. 99.

¶ To whom the charge thereof belongeth.] It belongeth to the Coroner, as appeareth by the Statute de officio Coronatoris, Anno 4 E. 1. The ancient Authors ubi supra, agree herein.

CAP. LIX.

Of Wreck.

SEE the Second part of the Institutes W. 1. cap. 2. and the exposition upon the same.

CAP. LX.

Of false tokens, or letters in other mens names.

IF any person falsly and deceitfully obtain into his hands any moneys, goods, chattels, Jewels, or other things of any person or persons, by colour or means of any false or privy tokens, or counterfeit letters made in any other mans name, &c. he shall suffer such correction by punishment of his body, setting upon the pillory, or other corporall pain (except pains of death) as shall be to him adjudged by the person and persons before whom he shall be convicted, with a saving to the party grieved by such deceit, such remedy by way of Action, or otherwise, as he might have had by the Common law. 33 H. 8. c. 1.

Here it is to be observed, that upon this Statute, for this offence the offender cannot be fined, but corporall pain only inflicted.

CAP. LXI.

Of Theftbote.

Stat. Wall. Anno 12 E. 1. Vet. Mag. Cart. pt 2. fo. 6. See Rot. claus. An. 1 E. 1. m. 7. 42. Ass. p. 5. Mir. ca. 2. §. 12. 3 E. 3. Cor. 353. Stanf. Pl. Coron. 40. b. 42 Ass ubi supra.

THeftbote (described by Act of Parliament) est emenda furti capta sine consideratione Curæ domini regis: and so much the word signifieth, bote being taken for amends; theftbote, that is, amends for theft.

This offence is more then misprision of felony, for that is not a concealment of his bare knowledge only: but Theftbote is when the owner not only knowes of the felony, but taketh of the theif his goods again, * or amends for the same to favour or maintaine him, that is, not to prosecute him, to the intent he may escape: but in that case, if he receive the theif himself, & aid and maintain him in his felony, then is he accessory to the felony. And so note a diversity, quandus proprietarius recipit latrocinium, & quando latorem. But if a man take his goods again that were stollen, it is no offence, unlesse he favour the thief, as is aforesaid.

3 E. 3. Cor. 353.

The punishment of Theftbote is ransome and imprisonment: and seeing the punishment of Theftbote, which is greater then concealment of felony, is but ransome and imprisonment, it standeth with reason, that the punishment of * misprision of felony should be but fine and imprisonment. Theftbote is sometimes taken pro ipso latrocinio, for the thing it self stollen from you.

* See before in the chapter of Misprision of treason. ca. 3. Mir. ca. 1. §. 17. Britton fo. 33. * That is stoln cloth.

You shall read in ancient Authors of Redoubbors, Addoubors, derived of the French word addoubeur, they are in Law patchers botchers, or menders of apparell, that take * theftbote of cloth (and change it into another fashion) and are dwelling out of Burghs and Cities; because in those days burghs and cities were so well governed, as such offenders were soon discovered: for they were not then commended, for that they were populous, but for that the Governers were provident in preventing of offences.

CAP. LXII.

Of Indictments.

See the 1. pt. of the Institutes. sect. 194, 195.

COncerning Indictments we have spoken somewhat in the First part of the Institutes. Sect. 194, 208. And you may read in my Reports many resolutions concerning Indictments, viz. Lib. 4. fo. 40, 41, 42. &c. lib. 5. fo. 120, 121, 122, 123. li. 7. fo. 5. 6. 10. li. 8. fo. 57. 36, 37. li. 9. 62, 63. 116, 118.

Holcrofts case. Artic. super Cart. ca. 10. The same was again resolved in Wrots case, ubi supra.

We will adde one point adjudged in the case between Burgh and Holcraft before mentioned in the Chapter of Appeals, which was, that where it is provided by the Statute de Artic. super Cartas cap. 3. En case del mort del home (deins le verge) ou office del Coroner appent as views, & enquests de ceo faire, soit maunde al Coroner del pais que emsemblement ove le Coroner del hostel le Roy face leffice que appent, &c. And in that case one man was Coroner both of the Kings house and of the County, & the Indictment of manslaughter was taken before him as Coroner both of the Kings house, and of the County. And it was adjudged that the Indictment was good, because the mischief expressed in the Statute was remedied, as well when both offices was in one person, as when they were in divers: and therefore in this case the rule did hold, Quando duo jura concurrunt in una persona, æquam est, ac si esset in diversis.

Richard

Richard Weſton **Peoman, late ſervant of Sir** Gervaſe Elwys **Lieutenant of the Tower, and under the Lieutenant, Keeper of Sir** Thomas Overbury **then priſoner in the Tower, was indicted: For that he the ſaid** Richard **the 9 day of May An. 11. Ja. Regis, in the Tower of London, gave to the ſaid Sir** Tho. Overbury **poyſon called Roſeacre in broth, which he the ſaid Sir** Thomas **received.** Et ut idc Rich. Weſton prafatum Tho. Overbury magis celeriter interficeret & murdraret, 1 Junii Anno 11 Ja. Regis ſupradict. **gave to him another poyſon called White Arſenick, &c. & that** 10 Junii An. 11 ſuprad. **gave to him a poyſon called Mercury Sublimat in Tarts,** ut pradict' Tho. Overbury magis celeriter interficeret & murdraret: **and that a perſon unknown in the preſence of the ſaid** Richard Weſton, **and by his commandment and procurement, the** 14 **day of Septemb.** anno 11. ſupradict. **gave to the ſaid Sir** Thomas **a glyſter mixt with poyſon called Mercury ſublimat,** ut pradictum Thomam magis celeriter interficeret & murdraret. Et prædictus Thomas Overbury de ſeperalibus venenis prædictis, & operationibus inde, à prædictis ſeperalibus temporibus, &c. graviter languebat uſque ad 15 diem Septemb. Anno 11. ſupradicto, quo die dictus Thomas de pradictis ſeperalibus venenis obiit venenatus, &c. **And albeit it did not appeare of which of the ſaid poyſons he died, yet it was reſolved by all the Judges of the Kings Bench, that the indictment was good; for the ſubſtance of the indictment was, whether he was poyſoned or no. And upon the evidence it appeared, that** Weſton **within the time aforeſaid had given unto Sir** Thomas Overbury **divers other poyſons, as namely the powder of Diamonds,** Cantharides, Lapis Cauſticus, **and powder of Spiders,** and Aqua fortis **in a glyſter. And it was reſolved by all the ſaid Judges, that albeit theſe ſaid poyſons were not contained in the Indictment, yet the evidence of giving them was ſufficient to maintain the Indictment: for the ſubſtance of the Indictment was** (as before is ſaid) **whether he were poyſoned or no. But when the cauſe of the murder is laid in the Indictment to be by poyſon, no evidence can be given of another cauſe, as by weapon, burning, drowning, or other cauſe, becauſe they be diſtinct & ſeveral cauſes: but if the murder be laid by one kind of weapon, as by a Sword; either Dagger, Stiletto, or other like weapon is ſufficient evidence, becauſe they be al under one Claſſis or cauſe. And afterwards,** Ann Turner, **Sir** Gervaſe Elwys, **and** Richard Franklyn **a Phyſitian,** (purveyor of **the poyſons**) **were indicted as acceſſories before the fact done: And it was reſolved by all the ſaid Judges, that either the proofs of the poyſons contained in the Indictment, or of any other poyſon were ſufficient to prove them acceſſories: for the ſubſtance of the indictment of them as acceſſories was, whether they did procure** Weſton **to poyſon Sir** Thomas Overbury: **and becauſe that not only** Anne Turner, **and** Richard Franklyn, **but ſome of the degree of Nobility were indicted as acceſſories in another County,** viz. **in the County of Midd. divers notable points were reſolved upon the ſtatute of** 2 E. 6. **First, if the Acceſſory be in the County of Midd. where the Kings Bench is, and the principall did the felony, &c. in another County, that the Court of the Kings Bench is within the words of that Act,** viz. (and that the Juſtices of Gaol Delivery, or Oier and Terminer, or two of them, &c.) **for the cauſes and reaſons given in the Lord** Zanchers **caſe** Lib. 9. fo. 117, 118, &c. **Secondly, if the Indictment be taken in the Kings Bench, then the Juſtices ſhall not write in their own names,** quia placita ſunt coram rege. **Thirdly, divers preſidents were ſhewed where the Acceſſory was in the County of Midd. where the Kings Bench ſat, and the principall was attainted in another County, that the Juſtices of the Kings Bench have removed the Record of the attainder of the principall before them by** Certiorari, & **ſo it was done in the Lord** Zanchers **caſe,** ubi ſupra. **The like preſident was ſhewed in a caſe where the principall was attainted in the County of Oxon. and the Acceſſory was in Midd. and the Kings Bench ſitting there, the Juſtices of the ſame Court removed the attainder before them by** Certiorari. **Fourthly, it was reſolved, that the Lord Steward of England, who is a Judge in caſe of High Treaſon, or felony committed by any of the Peers of the Realm, is within theſe words,** Juſtices of Gaol-de-

Sir Tho. Overburies caſe. Mich. 13. Jac. See before cap. 7. Of murder more of this caſe.

Vide li. 9. fo. 67. Mackalliez caſe Acc.

2 E. 6. cap. 24.

livery, or Oier and Terminer, because he is a Justice of Oier and Terminer, for his authority is by Commission, and the words of his Commission be after divers recitals, Et superinde, audiend, examinand, & respondere compellend, & fine debit terminand: so as he hath power to hear and determine. And where the words be [or any two of them] that is to be intended, where there be two or more Justices; and yet where there is but one, it extendeth to him.

39 H.6.42. 23 Ass.p.7. As the Statute of Merton cap. 3. power being given to the Sheriffe in case of Redisseisin, the words be, Assumptis tecum Coronatoribus placitorum Coronæ, &c. in the Plurall number. And yet where there is but one Coroner in the County the Statute extends thereunto, and the Sheriffe shall take that one. Also the words of the statute are further, That then the Justices of Gaole delivery or of Oier and Terminer, or other there authorized: within which words, [or other there authorized] the Lord Steward is included. Fifthly, if the Record of the attainder were by Writ of Certiorari removed out of London into the Kings Bench, then there arose another doubt upon the said Statute, if afterwards any proceeding should be had against any Peer, for that the words of the Statute be, The Justices, &c. shall write to the Custos Rotulorum or Keeper of the Record where such principall shall hereafter be attainted; and the attainder in this case was in London, and the Kings Bench was in Middlesex: so as if the Record should be removed into the Kings Bench in Middlesex, the Record should not be where the attainder was had; and consequently, the Lord Steward could not write to the Kings Bench. And therefore to prevent all questions, it was resolved, That in this case of the Lord Steward, no Certiorari should be granted, but a speciall Writ should be directed according to the words of the said Act to the Commissioners of Oier and Terminer in London, to certifie whether the principall was convicted or acquited: and they made a particular Certificat accordingly, so as the Record of the attainder of the principall, did notwithstanding that Certificat, remaine with the Commissioners of Oier and Terminer in London: so as if any further proceeding should be had, the Lord Steward might write to them, as after he did in the case of R. Earle of S. and F. his Wife.

And it is to be observed, that the ancient wall of London (a mention whereof doth yet remain) extendeth through the Tower of London; and all that which is on the West part of the wall, is within the City of London, viz. in the Parish of All-Saints Barking, in the ward of the Tower of London: and all that is on the East part of the Wall is in the County of Middlesex: and the Chamber of Sir Thomas Overbury was within the Tower on the West part of the said Wall, and therefore Weston was tried within the City of London.

And where it is often said in many [a] Acts of Parliament, [b] Records, and [c] Book cases, that the King cannot put any man to answer, but he must be appraised by Indictment, Presentment, or other matter of Record: True it is, in Pleas of the Crown or other common offences, Nusances, &c. principally concerning others, or the publick, there the King by law must be appraised by Indictment, Presentment, or other matter of Record; but the King may have an Action for such wrong as is done to himselfe, and whereof none other can have any Action but the King, without being appraised by Indictment, Presentment, or other matter of Record, as a [d] Quare impedit. [e] Quare incumbravit, a Writ of [f] Attaint, [g] of Debt, [h] Detinue of Ward, [i] Escheat, [k] Scire fac. pur repealer patent, &c.

a Mag. cart. ca. 29. 5 E.3.cap. 25. E.3.c.4.stat.5. 28 E.3.ca.3. 37 E.3.cap.18. 38 E.3.cap.9. 42 E.3.cap.3.
b Rot.claus. 18 H.3.m. Rot.Parl.15 E.3. nu.9,10.& 15. 42 E.3.nu.29. Sir John A Lees case.

17 R.2.nu.37.2 H.4.nu.60. c 7 E.3.fo. 26.50. Vide 6 E.3.fo.33.& 8 E.3.30. 26 E.3.74.tit.rescous 21. 43 E.3.32. per Knivet. 2 E.3.fo.7. John de Britains case. 3 E.3.19. 45 E.3. Decies tantum 12. d 5 E.2. Quar.Imp.167.33 E.3. Bfe 916. e 17 E.3.50.74. F.N.B.48.f.13 E.3. Jurisd.23. f 42 E.3.26.F.N.B. 107. D. g 19 H.6.47.34 H.6.3, &c. b 39 H.6.26. 1 H.4.1. 15 E.3. Corody 4. i Regist.fo.165.2. F.N.B. fo.7.b. 21 H.3. Bfe 882. Britton fo. 28.b.cap.18. k 16 E.3.Bfe 651.

CAP.

CAP. LXIII.

Of Councell Learned in Pleas of the Crowne.

WHere any person is indicted of Treason or Felony, and pleadeth to the Treason or Felony, not guilty, which goeth to the fact best knowen to the party; it is holden that the party in that case shall have no councell to give in evidence, or alleage any matter for him: but for as much as ex facto jus oritur, it is necessary to be explained, what matters upon his arraignment, or after not guilty pleaded, he may alleage for his defence, and pray councell learned to utter the same in forme of law. See before cap. 2. Petit treason. fo. 29. 34. 9 E. 4. 22. Stanf. pl. cor. 151. b. otherwise it is in an appeale which is the suit of the party.

And first upon the arraignment what advantage he may take in case of High Treason by the common law. If it be for compassing the death of the King, he may alleage, that in the Indictment there is no such overt or open Act set down in particular, as is sufficient in Law, or the like. For it is to be observed, that in no case the party arraigned of treason or felony, can pray councell learned generally, but must shew some cause. 1. 1 H. 7. 12.

Secondly, in case of High Treason by force of any statute, he may alleage, that the Indictment being grounded upon a Statute, the Statute is either mistaken or not pursued. 2.

Thirdly, of what matters he may take advantage equally concerning them both. He may alleage, that there was not at the time of the Indictment of High Treason, two lawfull accusers, that is, two lawfull witnesses. 3.

Fourthly, of what matters he may generally take advantage in all cases of treason and felony. He may alleage, that the offence is not certainly alleaged in respect of the matter, time, and place, or that he is not rightly named, or have not a right addition, or that the offences were done before the last generall pardon. 4.

Fifthly, after he hath pleaded not guilty, what advantage he may take upon the evidence: He may alleage, that he ought to have two lawfull witnesses in case of High Treason, to prove the fact against him. 5.

Sixthly, he may take advantage in arrest of judgement, if the verdict be found against him, that the triall came not out of the right place: as it fell out in Arundels case convicted by a Jury of wilfull murder; he informed the Court, that the Jury that tried him came out of a wrong place, and thereupon he had Councell Learned assigned him; who indeed found, that the Venire facias was misawarded, & the Court thereof by the Councell being informed, judgement was staied. And that the prisoner may alleage these or the like matters, it is evident: because for every matter in law rising upon the fact, the prisoner shall have Councell learned assigned him. Also it is lawfull for any man that is in Court, to informe the Court of any of these matters, lest the Court should erre, and the prisoner unjustly for his life proceeded with. And the reason whereof regularly in case of treason and felony, when the party pleads not guilty, he was to have no counsell, was for two cases. First, for that in case of life, the evidence to convince him should be so manifest, as it could not be contradicted. Secondly, the Court ought to see, that the Indictment, Triall, and other Proceedings be good and sufficient in law; otherwise they should by their erroneous judgement attaint the prisoner unjustly. 6. Lib. 6. fo. 14. Arundels case. 9 E. 4. 22. Stanf. ubi sup. 7 H. 4. 34. &c. See before fo. 29.

Robert Cherford counselled the Prior of the Priory of Binham in Norfolke, that John of Leicester the Kings Serjeant at Armes, comming to the Priory with the Kings Writ of Priby Seale, should not be admitted to the Priory: for which counsell he was indicted in the Kings Bench, and depending the Proces upon the Indictment, the King doth pardon him: and in the Pardon is contained a Supersedeas to the Justices, commanding them to proceed no further. Rot. claus. 14 E. 2. 17. 27. Octob.

CAP.

CAP. LXIV.

Of Principall and Accessory.

ALbeit Iustice Stanford hath well collected the Bookes concerning Principall and Accessory, yet diversa desiderantur: and necessary it is, that some things touching the same should be added, which are very necessary to be knowne.

It is a sure Rule in Law, that In alta proditione nullus potest esse accessorius, sed principalis solummodo. This rule being well understood, will open the reason of divers cases, which yet are involved in darknesse.

High Treason is either by the Common law, or by Act of Parliament: we will set downe examples (which ever do illustrate) of both.

A. doth counterfeit the Kings coine, viz. Shillings, and C. knowing the same doth receive A. and comfort and aide him: this counterfeiting is High Treason by the Common law in A, as hath beeen said: and yet it hath been holden that in this case C. hath not committed treason: for say they, in case of felony, a receiver of a felon after the felony done, knowing him to be a felon, is no principall, but an accessory; and for that there is no accessory in treason, therefore C. in the case before committeth no treason; for then in judgement of law he must be a counterfeiter of the Kings coine within our statute of 25 E. 3. which he is not: and therefore they say, this is Casus omissus, and not within any of the Classes or Heads of the said Act of 25 E. 3. But all agree, that procurors of such treason to be done before the fact done, if after the fact be done accordingly, in case of treason, are principals, for that they are participes criminis in the very act of counterfeiting.

Mich. 12 & 13. Eliz. 296. Dier, Conierscase.

[a] But saving reformation we hold, that if any man committeth High Treason, and thereby becommeth a traytor, if any other man knowing him to be a traytor, doth receive, comfort, and aide him, he is guilty of treason, for that there be no accessories in High Treason. [b] And so it was resolved in the case of Abingdon, who received, comforted, and aided Henry Garnet Superior of the Jesuits, knowing him to be guilty of the Powder Treason, and accordingly Abingdon was indicted and attainted of High Treason.

[a] 19 H. 6. 47. 3 H. 7. 10. Stanf. fo. 3. See before cap. Treason. Verb. Si home counterface le grand Seale.
[b] Pasch. 4. Jac. Abingdons case resolved by the Justices.

[c] And where it is said, that the said offence in Conyers case was misprision of treason, that cannot be, because there was a consent, and not a concealment only: otherwise, High Treason being the highest offence should have more favour then felony: for the receiver and comforter in case of felony is punished by death, and so is not he that committeth misprision of treason. And lastly, this is no new treason, but a partaking and a maintaining of the old.

[c] M. 12 & 13 El. ubi supra. See before ca. 3. Of Misprision of treason.

In case of felony there are Principals and Accessories, and Accessories be of two sorts, either before the offence be committed, or after. See the Second part of the Institutes, W. 1. cap. 14. And concerning this, there be also certaine Rules. [d] Nullus dicitur felo principalis, nisi actor, aut qui præsens est abettans, aut auxilians actorem ad feloniam faciendam. But this Rule hath his exception: for [e] in case of poysoning, if one layeth poyson for one, or infuse it into Broth, or the like, albeit he be not present when the same is taken; and either the party intended, or any other is poysoned, yet is he a principall: and in that case, both the principall, and procurer, or accessory may be absent. See the Bookes aforesaid for accessories before the felony committed, and where and in what manner the procurement shall be said in law to be pursued: the learning whereof is so plainly set downe, as the same need not herein to be repeated. [f] Nullus dicitur Accessorius post feloniam, sed ille qui novit Principalem feloniam feciſſe, & illum receptavit

[d] 7 H. 4. 27. 21 E. 4. 71. 13 H. 7. 10. Pl. com. Lib. 4. fo. 42. in Heydons case. Lib. 9. fo. 67. Mackallyes case. & Lib. 11. fo. 5.
[e] Lib. 4. fo. 44. Vaux es case. Pl. com. fo. 474. Saunders case. Lib. 9. 81. Agnes Gores case. See Pasc. 32 E. 3. coram Rege Rot. 62. Ph. Cliftons case.
[f] 25 E. 3. 39. b. cor. 126. 26 Ass. 47. 9 H. 4. 1. 7 H. 6. 41.

receptavit & comfortavit. [a] And therefore if a man writs Letters for his deliverance, or in favour of him, or the like; he is no acceſſory, for that he received not the felon. [a] 26 Aſſ. ubi ſup.

[b] A Vicar, which inſtructed an Approver which could not reade, whileſt he was in priſon, to reade, whereby he eſcaped, was adjudged not acceſſary to the felony. [b] Mic. 7 R. 2. co. ram Rege Rot. 23. Cant. 7 H. 4. 17.

Catlin and Browne Juſtices of Aſſiſe in the County of Suffolke put this caſe to all the Judges. [c] A man committed felony in the County of Suffolke, for which he was committed to the Gaole; and R an Attorney adviſed the friends of the felon to perſwade the witneſſes not to appear to give evidence againſt him, which was done accordingly. And it was reſolved, that neither the friends nor the Attorny were acceſſories to the felony, but that it was a great contempt and miſpriſion, for which they might be fined and impriſoned. [c] Mic. 11. & 12 El. the caſe of Roberts the Attorney

[d] The acceſſory cannot be guilty, of petit treaſon, where the principall is guilty but of Murder. For Acceſſorius ſequitur naturam ſui principalis. [d] See before cap. petit treaſon.

[e] If divers commit any murder, or other felony, one man may be both principall and acceſſory to the other. [e] 7 H. 4. 17.

See before cap. Clergie, that if the principall before attainder hath his Clergie, the acceſſory is diſcharged. And note generally, where the principall before attainder is pardoned, or his life otherwiſe ſaved, the acceſſory is diſcharged. [f] 2 H. 4. 16.

CAP. LXV.

Of Miſpriſions divers and ſeverall: and firſt of Miſpriſion of Felony, &c.

OF Miſpriſion of treaſon we have already ſpoken, and of the Etymologie of the word. It remaineth now that we ſpeake of other Miſpriſions.

Miſpriſion is twofold: one is Crimen omiſſionis, of omiſſion, as in concealement, or not diſcovery of treaſon or felony: another is Crimen commiſſionis, of commiſſion, as in committing ſome heynous offence under the degree of felony.

Or miſpriſion is of two ſorts, viz. Paſſive, and Active: Paſſive is of the nature of concealement, whereof ſome be by the Common law, and ſome by Statute. By the Common law, as Paſſive miſpriſion, that is concealement of High Treaſon, whereof we have ſpoken; and Paſſive Miſpriſion, that is concealment of felony, whereof we are now in this Chapter to ſpeak. Some by Statute: as if any be moved to make commotion or unlawfull aſſembly, and do not within Twenty four houres declare the ſame to a Juſtice of Peace, Sheriffe, Maior, or Bailiffe, &c. Concealement by Juries, 3 H. 7. ca. 1. 33 H. 8. ca. 6, &c. 1 Mar. 1. Parl. ca. 12. 1 Eliz. cap. 17.

Now are we to ſpeak of concealment or not diſcovery of felony. As in caſe of High Treaſon, whether the treaſon be by the Common law, or Statute, the concealement of it is miſpriſion of treaſon. So in caſe of felony, whether the felony be by the Common law, or by Statute, the concealement of it is miſpriſion of felony. See the ſecond part of the Inſtitutes. W. 1. cap. 9.

If any be preſent when a man is ſlaine, and omit to apprehend the ſlayer, it is a miſpriſion, and ſhall be puniſhed by fine and impriſonment. 3 E. 2. Cor. 395.

And as the Concealement of High Treaſon is higher by many degrees then the concealment of felony, ſo the puniſhment for the concealment of the greater is heavier then of the leſſer, and yet the concealement of felonies in Sheriffs, or Bailifs of liberties is more ſeverely puniſhed then in others, viz. by impriſonment by one year, and ranſome at the will of the King. From which puniſhment W. 1. ca. 9. See the expoſition thereof, ubi ſup.

niſhment if any will ſave himſelfe he muſt follow the advice of Bracton, to diſcover it to the King, or to ſome Judge or Magiſtrate, that for adminiſtration of juſtice ſupplieth his place, with all ſpeed that he can.

Bract. lib. 3. fo. 118. a. Non enim debet morari in uno loco per duas noctes, vel per duos dies, nec debet ad aliqua negotia, quamvis urgentiſſima, ſe convertere, quia vix permittitur ei ut retroſpiciat.

And this is intended of a concealment, or not diſcovery of his meer knowledge: For if in caſe of High treaſon, he that knoweth it, before it be done and aſſenteth to it, is particeps criminis, and guilty of treaſon: and in caſe of felony, he that receiveth the thief and aſſenteth to it, is acceſſory.

See before the chapt. of Miſpriſion of treaſon fo. 36. and of Principall and Acceſſory fo. 148.

See before in the Chapter of Miſpriſion of treaſon, that every treaſon and felony doth include in it miſpriſion of treaſon and felony. See the ſtatute of 23 El. ca. 1. Of miſpriſion, that is, crimen commiſſionis.

Compaſſings, or imaginations againſt the King, by word, without an overt act, is a high miſpriſion, as before is ſaid. * In cogitatione tua ne detrahas Regi, &c. quia aves coeli portabunt vocem tuam, & qui habet pennas annunciabit ſententiam. * Eccleſiaſtes ca. 10. v. 20.

[a] If any man in Weſtminſter Hall, or in any other place, ſitting the Courts of Chancery, the Exchequer, the Kings Bench, the Common Bench or before Juſtices of Aſſiſe, or Juſtices of Oier and Terminer, (which Courts are mentioned in the ſtatute of 25 E. 3. De proditionibus) ſhall draw a weapon upon any Judge, or Juſtice, though he ſtrike not; this is a great miſpriſion, [b] for the which he ſhall loſe his right hand, and forfeit his lands and goods, and his body to perpetuall impriſonment: the reaſon hereof is, becauſe it tendeth ad impedimentum Legis reriæ. [c] So it is, if in Weſtminſter Hall or any other place, ſitting the ſaid Courts there, or before Juſtices of Aſſiſe, or Oier and Terminer, and within the view of the ſame, a man doth ſtrike a Juror, or any other with weapon, hand, ſhoulder, elbow, or foot, he ſhall have the like puniſhment; but in that caſe, if he make an aſſault, and ſtrike not, the offender ſhall not have the like puniſhment.

a See the 2. part of the Inſtitutes W. 1. ca 33. 25 E. 3. ca. 2.

It is high treaſon to kill any of the in their places.

b 22 E. 3. 13. 19 E. 3. judgment 274. Mich. 6 E. 3. Coram Rege Rot. 55. Eborum. 41 E. 3. Cor. 280.

Nota the forfeiture of his lands is but during his life.

41 E. 3. 25.

c Int leges Alveredi cap. 34. 3 El. Dier 188. 2 Ja. Bellinghams caſe Coram rege with his elbow & ſhoulder.

[d] If any ſtrike in the Kings Palace, where the Kings royall perſon reſideth, he ſhall not loſe his right hand, unleſſe he draw blood; but if he draw blood, then his right hand ſhall be ſtricken off, he perpetually impriſoned, and fined and ranſomed.

d 33 H. 8. ca. 12.

Note the law makes a great difference between ſtroke or blow, in or before any of the ſaid Courts of Juſtice, where the King is repreſentatively preſent, & the Kings Court, where his royall perſon reſideth. For in the Kings houſe (as hath been ſaid) blood muſt be drawne, which needeth not in or before the Courts of Juſtice, but a ſtroke only ſufficeth. Again, the puniſhment is more ſevere in the one caſe, then in the other: ſuch honour the law attributeth to Courts of Juſtice, when the Judges or Juſtices are doing of that which to Juſtice appertaineth: and the reaſon is, Quia Juſtitia firmatur Solium.

But note, that by the ancient laws of this Realm, ſtriking only in the Kings Court was puniſhed by death. Vide Lambert inter leges Inæ ca. 6. Si quis in Regia pugnaverit, rebus ſuis omnibus mulctator, & ſicne morte etiam plectendus, Regis arbitrium & jus eſto. Inter leges Canuti cap. 56. Si quis in Regia dimicaverit, capitale eſto, &c. Inter leges Alveredi cap. 7. Qui in Regia dimicaverit, ferrumve diſtrinxerit, capitor, & regem penes arbitrium vitæ neciſque ejus eſto, &c.

[e] Peter Burchet priſoner in the Tower, ſtroke within the Tower John Longworth his keeper (who ſtood in a window reading of the Bible) with a billet on the head behind, whereby blood was ſhed, and death inſtantly enſued: this being without any proviſion was adjudged murder, for which he was attainted, and before his execution (which was in the Strand over againſt Somerſet houſe) his right hand was firſt ſtricken off, by force of the ſtatute of 33 H. 8. for that the Tower was one of the Queenes ſtanding houſes or Palaces.

e Mich. 15. El. in the caſe of Peter Burchet Eſquire of the middle Temple.

The Kings Palace at Weſtminſter hath this liberty and priviledge, viz.

Nulla

Nullæ citationes, aut ſommonitiones liceant fieri cuicunque infra Palatium Regis Weſtm. Paſch. 8 E. 2. Coram rege Rot. 28 Nort.

Like priviledge hath Weſtminſter Hall, or other place, where the Kings Juſtices, &c. ſit, as by theſe following Records appeareth.

[a] Quia Bedellus Univerſatis citari fecit Wil. de Wivelinghã infra oſtium aulæ Weſtm, Juſticiariis ſedentibus, ad comparend coram Cancellario, &c. pro quo ſe poſuit in gratiam Regis, committitur Gaolæ, & Henricus de Harwood, ad cujus ſectam proſecutus fuit, committitur Mariſchal. & finem fecit 40. s. *a* Mich. 12 E. 3. Coram Rege Rot. 101. Cant.

[b] Matilda de Nyerford, filia Willielmi de Nyerford militis defuncti, **did libell againſt** John **Earl of Warren,** & [c] Johan de Barro **Countes of Warren the Kings niece** (in camitina dominæ Reginæ Conſortis domini Regis) **in a cauſe of matrimony and divorce, and the ſame** Johan de Barro **was cited in the Kings Palace at Weſtminſter, &c. It was upon full examination of the cauſe, adjudged in Parliament in theſe words,** Quòd prædictum Palatium domini regis, eſt locus exemptus ab omni juriſdictione ordinaria, tam regiæ dignitatis & coronæ ſuæ, quam libertatis Eccleſiæ Weſtm, & maximè in præſentia ipſius domini Regis tempore Parliamenti ſui ibidem: ita quòd nullus ſummonitiones, ſeu citationes ibidem faciat, & præcipuè illis, qui ſunt de ſanguine domini Regis, quibus major reverentia, quam aliis fieri debet, &c. Conſideratum eſt, quod officiar committatur Turri London, & ibidem cuſtodiatur ad voluntatem domini Regis. *b* Placita coram domino rege in Parliamento ſuo apud Weſtm' in præſentia domini regis. An. 21 E. 1. *c* Ellanor daughter of E. 1. married with William Earl of Barry alias Barro in France, and had iſſue the ſaid Johan who married John EarleWarré.

Here two things are principally to be obſerved: Firſt, that this royall priviledge is not only appropriated to the Palace of Weſtminſter, but to all the Kings Palaces, where his royall perſon reſides. Secondly, that this priviledge is to be exempted from all Eccleſiaſticall jurisdiction, regiæ dignitatis & coronæ ſuæ ratione, &c.

If any doe reſcue a priſoner in or before any of the aboveſaid Courts, committed by any of the aforeſaid Juſtices, it is a great miſpriſion, for which he and the priſoner aſſenting to it, ſhall forfeit their lands and goods, and their bodies to perpetuall impriſonment, but ſhall not loſe his hand, becauſe no ſtroke or blow was given. 22 E. 3. 13.

But it was reſolved by all the Judges, that where Thomas Oldfield, **ſitting the Court of the Dutchy of Lancaſter, with a knife ſtabbed one** Ferror **a Juſtice of Peace in the view of the ſaid Court, that the Court of the Dutchy was none of the Courts to make it a miſpriſion to loſe his right hand, &c. but the offender was to be indicted, and grievouſly fined.** Trin. 8 Jac. reg. Oldfields caſe.

And in 9 El. one Guirling **ſtroke another in the White hall, ſitting the Maſters of Requeſts, and it was then reſolved by the Court of Kings Bench, that it was not any miſpriſion, for the which he ſhould loſe his right hand, &c. but he was indicted and fined.** Paſch. 9 Eliz. Guirlings caſe.

Quia Thomas de Holbroke manus violentas impoſuit ſuper Johannem de Loudham, &c. ad Seſſionem ſuam ſedentem apud Gipwicum, & eum dementitus eſt, committitur in Parliamento Turri London, & finitur 20. li. & invenit ſex milites manucaptores pro bono geſtu ſuo. Hil. 13 E. 3. Coram rege Rot. 104. Suff.

And where ſome of the books aboveſaid ſay, that the offender ſhall forfeit his lands, and ſome that he ſhall be diſherited, yet the forfeiture of his lands is only for a term of his life, (as before is ſaid;) for being no felony, the blood is not corrupted, nor the heir diſinabled to inherit. And this ſevere puniſhment is at the ſuit of the King, and the party may have his action, and it ſhall be tried by the officers and criers. And for ſuch a ſtroke Thomas of Whitteſly **recovered five hundred pounds,** Trin. 9 E. 3. Rot. 154. Midd. Trin. 9 E. 3. Rot. 154 Midd.

Britton ſaith, Aſcuns treſpaſſes ſont nequedent pluis puniſhable, ſi come treſpas fait en temps de peace a * Chivaliers, ou auters gents honorables per Ribaws, ou auters viles perſons; En quel caſe nous volons, que ſi Ribawe ſoit attaint al ſuit de cheſcun Chivalier, que il eyt ferue per felony ſans deſart del Chivalier que le Ribawe perd ſon pome dont il treſpaſſa: **ſo great a reſpect in thoſe dayes was had of honour and order.** Ribawe **is taken here for a Raſcall Ruffian. There is a great miſpriſion when any revenge is ſought againſt a Judge, Juſtice,** Brit. ca. 25. fo. 47. * Nota for the dignity of Knights.

ſtice, Officer, Juror, Serjeant, Counſellor, Miniſter, or Clerk, for that, which they doe in diſcharge of their ſeverall duties, offices, and places, concerning the adminiſtration of Juſtice.

Mich. 33. & 34. E. 1. Coram Rege Rot. 75.

Roger de Hegham **and others being Juſtices of** Oier and Terminer, **and ſitting in the Exchequer chamber, gave judgement for** Mary **late the wife of** William Brewſe **Plaintif, againſt** William le Brewſe **Defendant, which judgment was pronounced by** Roger de Hegham. William de Brewſe **demanded of** Roger de Hegham **if he would avow the judgement, and ſaid,** Roger, Roger, **now thou haſt thy will which of long time thou haſt ſought: of whom** Roger de Hegham **demanded, what is that? To whom** William de Brewſe **ſaid, my ſhame, and my loſſe, and this I will reward or recompence, or I will think of it. Whereof he being indicted and arraigned, and confeſſing the offence, the Record ſaith,** Et quia ſicut honor, & reverentia, qui miniſtris domini regis ratione officii ſui faciuntur, ipſo regi attribuuntur; ſic dedecus & contemptus miniſtris ſuis fact' eidem domino regi inferuntur; Conſideratum eſt quòd præd. Willielmus de Brewſe, diſcinctus in corpore, capite nudo, tena depoſita, eat è banco domini regis ubi placita tenentur in aula Weſtm', per medium aulæ prædict', cum curia plena fuerit, uſque ad Scaccarium (ubi deliquit) & ibidem veniam petat à præfato Rogero, &c. et poſtea committitur Turri London, ibidem moratur' ad voluntatem regis.

Nota.

Bract. lib. 2. 105. These words were given to the Treaſurer of England by the procurement of Pierce of Gaveſton.

Note this examplary judgement againſt a Gentleman of a great and honourable family. Quælibet pœna corporalis, quamvis minima, major eſt qualibet pœna pecuniaria. **And in that Record it is ſaid,** Quòd dominus rex filium ſuum primogenitũ, & chariſſimũ Edwardum Principẽ Walliæ, pro eo quòd quædam verba groſſa cuidam miniſtro ſuo dixerat, ab hoſpitio ſuo ferè per dimidium anni amovit, nec ipſum filium ſuum in conſpectu ſuo venire permiſit, quouſque dicto miniſtro de dicta tranſgreſſione ſatisfecerat.

Hil. 20. E. 3. Coram Rege Rot. 160.

Quia Petrus de Scales minatus fuit Ricũm de Worlingworth, qui fuit de conſilio Johannis de Moten, de vita & membris, dictus Petrus invenit plegios de bono geſtu ſuo.

There be many Records for abuſing of Jurors, viz. Paſch. 10 E. 3. Coram Rege Rot. 87. Gilbertus Twiſt. Paſch. 26 E. 3. ibidem, Rot. 22. Eſſex, Tho. Hubbert Hil. 7 H. 5. ibidem, Rot. 24. Ricus Cheddre. Mich. 17 E. 2. Coram Rege Rot. 63.

Percuſſio clerici curiæ in veniendo verſus curiam, &c. Trin. 11 E. 2. Coram Rege Rot. 42. London. **Not only theſe particular revenges abovelaid, but all other of what kind ſoever are great miſpriſions.**

Cap. Itinetris §. ultimo.

Alſo when any revenge is ſought againſt any man for complaining in any of the Kings Courts, ſuper gravaminibus, &c. **for grievances, &c.** Quia deterret homines à querelis ſuper gravaminibus in forma juris. De hiis qui vindictam fecerint, eo quod aliquo modo ſuper prædictis gravaminibus in curia domini regis conqueſti fuerunt.

Paſc. 10 E. 3. Coram Rege Rot. 86. Linc.

Juſticiarii taxaverunt damna 2 Marc' ſuper Willielmum Botesford, eo quòd minabatur quandam Hawiſiam de vita & membris, eo quòd ipſa proſequebatur ipſum in placito tranſgreſſionis.

We will conclude this point for private revenge with an ancient law before the Conqueſt. Si quis privato conſilio illatam ſibi injuriam vindicaret, antequam jus æquum ſibi dari poſtulaverit, quod nomine vindictæ eripuit reddito, integrum rei pretium præſtato, & 30 ſolidos dependito.

Inter leges Inæ cap. 9. Lamb.

See in the Fourth part of the Inſtitutes cap. **Of the Chancery, in the Articles againſt Cardinall** Woolſey. Artic. 4, 5, 6. 11. 41.

See the 4. part of the Inſtit. cap. Chancery. Artic. Verſ. Cardinall Woolſey. Art. 4, 5. 6. 11. 41.

CAP.

CAP. LXVI.

Of Conſpiracie.

[a] Conſpiracy is a conſultation and agreement betweene two or more, to appeale, or indict an Innocent falſely, and maliciouſly of felony, whom accordingly they cauſe to be indicted or appealed; and afterward the party is lawfully acquited by the verdict of twelve men: the party grieved may be relieved, and the offender puniſhed two wayes. Firſt, by a Writ of conſpiracy, which is a civill or common Action at the ſuit of the party, wherein the plaintife ſhall recover damages, and the defendant ſhall be impriſoned. Secondly, by Indictment at the ſuit of the King, the judgement whereof is criminall; of which we are now to ſpeak.

[b] Upon this ſuit of the King, if the offenders be convicted, the judgement is grievous & terrible, viz. That they ſhal loſe the freedome or franchiſe of the Law, to the intent that he ſhall not be put or had upon any Jury or Aſſiſe, or in any other teſtimony of truth: and if they have any thing to do in the Kings Courts, they ſhall come [c] per ſolem, id eſt, by broad day, and make their Attorny, and forthwith returne by broad day. And their houſes, lands, and goods, ſhall be ſeiſed into the Kings hands, and their houſes and lands eſtrepped and waſted, their trees rooted up and arraſed, and their bodies to priſon: all things retrograde, and againſt order and nature, in deſtroying all things that have pleaſured or nouriſhed them; for that by falſehood, malice and perjury, they ſought to attaint and overthrow the innocent. Which judgement in our Books is called, a villanous judgement. Firſt, in reſpect of the villany and ſhame, which the party hath which receiveth it. Secondly, for that by the judgement he loſeth the freedome and franchiſe of the Law, and therefore undergoeth a kind of bondage and villany. And the reaſon of this heavie and terrible judgement is: 1. For that the offenders have conſpired and plotted the death and ſhedding of the blood of an Innocent. 2. That they do it under faire pretence of Juſtice, and by courſe of law, which was inſtituted for the protection and defence of the innocent. 3. That if they had attainted the innocent, he ſhould have loſt his life, (by an infamous death) his lands, his goods, and his poſterity; for his blood thereby ſhould have been corrupted, &c. 4. All this falſhood, malice, and perjury is committed in placito Coronæ, in a ſuit for the King, which aggravateth and increaſeth the offence; for that the King is the Head of Juſtice, and a protector of the innocent: and therefore at the Kings ſuit, and not at the ſuit of the party, this villanous judgement ſhall be given. So as the law hath excellently diſtributed the remedies; the private action of the party to give him damages, &c. and the ſuit of the King for examplary puniſhment. And it is to be obſerved, that this Villanous judgement is given by the Common law, (as in the caſe of Attaint) and not by force of any Statute.

King E. 3. demanded of his Juſtices and Serjeants, whether divers men being indicted of conſpiracy for the indicting of R. of felony, were mainpernable or no? And they anſwered the King expreſly, that they were not, in reſpect of the odiouſneſſe of the offence.

Vide ſtatut. de conſpiratoribus, Anno 21 E. 1. vet. Mag. Cart. part 1. fo. 111. & definition conſpir. 33 E. 1. ibid. fo. 90. b. Artic. ſup. Cart. cap. 10. F. N. B. 114, 115. Stanf. pl cor. 172. &c. Lib. 4. fo. 45. Lib. 9. fo. 16. 56, 57. 78.

[b] 24 E. 3. 45. 27. aſſ. 43 E. 3. Conſpiracy. 11 59. 4 H 5. Judgment 120. the like judgement as in attaint. See the firſt part of the Inſtitutes. Sect.

[c] Trin. 18. E. 3. coram Rege. Rot. 148. Paſch 32. E. 3. coram Rege. Rot. 58.

27 Lib. aſſ. p. 12.

CAP. LXVII.

Of Penſions, &c. received by Subjects, of Foraine Kings, &c.

IT is not lawfull for any ſubject of the King of England to take a Penſion &c. of any foraine King, Prince, or State (without the Kings licenſe) albeit they be in league with the King of England; both, for that they may become enemies, and for that alſo it is miſchievous and dangerous to the King himſelfe and his State, as it appeareth by this Diſtichon,

Principe ab externo veniunt lethalia dona,
Quæ ſtudii ſpecie, fata, necemque ferunt.

And this was (ſay they) the caſe of the Lord Haſtings Chamberlaine to King E.4. who in the Fifteenth year of his raign, received a Penſion of two thouſand Crowns yearly from the French King: who being informed by Juſt. Catesbye his inward friend, and others learned in the law, that the receiving hereof was an offence againſt Law, being deſired by Pierce Clerett a Frenchman (who paid the Penſion) to make him an acquittance for receipt thereof for his diſcharge, utterly refuſed the ſame. This report I do the rather hold to be true, for that all our Engliſh Hiſtorians, (who for the moſt part rehearſe but the carkaſſe or outſide of any point in Law) give great credit hereunto. And what ill conſequence this and other like Penſions, and others of the Councell of King E.4. had, you may reade in our Hiſtories.

See the caſe in 7 R. 2. of [a] Spencer Biſhop of Norwich; and there alſo the caſe of [b] Pierce Creſſingham, and others: and of [c] Sir William Ellingham and others, puniſhed for receiving of money, &c. of the French King, which drew them without the Kings licenſe, to peeld up Caſtles and Forts in France committed to their cuſtody, puniſhed by Fine and Impriſonment.

See the fourth part of the Inſtitutes, cap. Of the Chancery, Artic. 27. Againſt Cardinall Woolſey.

See the fourth part of the Inſtitutes, cap. the Chancery, Artic. Againſt Cardinall Woolſey, Art. 27. Vide Parl. 7 R. 2. nu. 16. Mat. ca. 26. v. 24.

Nemo poteſt duobus dominis ſervire: aut enim unum odio habebit, & alterum diliget, aut unum ſuſtinebit, & alterum contemnet. 4 Regum ca. 5. v. 26, &c. Geheſi.

See 3 Jac ca. 5. concerning the ſervice of a Subject as a Souldier or Captain to a forain Prince, hereafter cap. Fugitives.

Polydor. Hall. Hollingſhed. Stow, &c.

a Rot. Parl. 7 R. 2. nu. 15. 18. 20, 21, 22, 23. b Ibid. nu. 17. c Ibid. nu. 24.

CAP. LXVIII.

Of Bribery, Extortion, Exaction, &c.
And firſt of Bribery.

BRibery is a great miſpriſion, when any man in Judiciall place takes any Fee or Penſion, Robe, or Livery, Gift, Reward, or Brocage of any perſon, that hath to do before him any way, for doing his office, or by colour of his office, but of the King only, unleſſe it be of meat and drink, and that of ſmall value, upon divers, and grievous puniſhments. Forteſcue, ca. 51.

THis word [Bribery] commeth of the French word Briber, which ſignifieth to devoure, or eat greedily, applyed to the devouring of a corrupt Judge, of whom the Pſalmiſt ſpeaking in the perſon of God, ſaith, Qui devorat plebem meam ſicut eſcam panis. Qui cognoſcit faciem in judicio, non bene facit: iſte pro buccella panis deſerit veritatem. Pſalm. 13.4. Prov. 28.21.

But let us peruſe the Branches of this deſcription.

CA great miſpriſion.] But it may be objected, that Bribery in a Judge was ſometime adjudged a higher offence. For whereas at the Aſſiſes holden at Lincolne in the 23 yeare of E. 3. an Exigent was to have been awarded againſt Richard Saltley, Hildebrand Boreſward, Guilbert Holliland, Thomas Derby, and Robert Dalderby, who formerly had been indicted of divers felonies before Sir William Thorpe, Chief Juſtice of the Kings Bench, and one of the Juſtices of Aſſiſe of the ſaid County of Lincolne, he the ſaid Sir William Thorpe to ſtay the ſaid Writ of Exigent againſt them. Cepit munera contra juramentum ſuum, viz. of Richard Saltly 10 li. of Hilderbrand 20 li. of Holliland 40 li. of Derby 10 li. and of Dalderby 10 li. King Edward the Third appointed the Earles of Arundell, Warwick, and Huntingdon, and two Lords, the Lord Gray and the Lord Burghers, to examine the matter. Before whom Sir William Thorpe being charged with the ſaid Bribery, Non potuit dedicere, &c. Now the Record ſaith: Conſideratum eſt per dictos Juſticiarios aſſignatos ad judicand ſecundum voluntatem domini Regis, & ſecundum regale poſſe ſuum, quòd quia prædictus Willielmus de Thorpe, qui ſacramentum domini Regis, quod erga populum ſuum habuit cuſtodiendum, fregit malicioſe, falſe, & rebelliter in quantum in ipſo fuit, & ex cauſis ſupradictis per ipſum Willielmum, ut prædictum eſt, expreſſe cognitis, ſuſpendatur, & quod omnia tra, & tenta, bona & catalla ſua remaneant forisfacta. This ſentence ſeemeth to have his foundation as well upon the oath of the Judges, (for the Record ſaith) contra juramentum ſuum, and the concluſion of the Oath, And in caſe ye be found in any default in any of the points aforeſaid, ye ſhall be *ad voluntatem Regis*, of body, lands, and goods, thereof to be done as pleaſeth him: As alſo for that this laſt clauſe is enacted by authority of Parliament (as they ſay) in Anno 20 E. 3. And hereupon they the ſaid Lords were appointed to judge ſecundū voluntatem domini Regis, & regale poſſe ſuum, according to the words of the Oath and Act of Parliament. And this judgement was repeated in Anno 25 to the Lords, and affirmed by them. Rot. Par. Anno 24 E. 3. part 3. m. 2. & Rot. Par. Anno 25 E. 3. part 1. m. 17. Rot. Parl. 25 E. 3. nu. 10. 23 E. 3. Anno 24 E. 3. The Oath of the Juſtices Anno 18 E. 3. 20 E. 3. cap. 1.

This preſident is not to be followed at this day for divers cauſes. Firſt, it ſeemeth by the violation of the Kings Oath, and of this word [rebelliter] and by the forfeiture of all his lands and tenements to the King, that this offence ſhould

be

be treason against the King, and then it being either High Treason, or Petit Treason, it is taken away by the statute of 25 E. 3. De proditionibus, the same being none of them, that are there expressed. And in all the Record this word [felonice] is not to be found, as it ought to have been, if it had been felony.

Neither by the words of the Oath, or of the supposed Act of 20 E. 3. can the judgement (quòd suspendatur) be warranted: for these words [to be at the Kings will for body, &c.] cannot be extended to losse of life, no more then the Statute of Carlisle (sub forisfactura omnium, quæ in potestate sua obtinet) extendeth not to forfeiture of life, but to imprisonment, &c. viz. losse of liberty, &c.

Anno 35 E. 1. the stat. of Carlisle.

20 E. 3. cap. 4.

But at this Parliament, viz. in Anno 20 E. 3. taking in hand of quarrels other then their own, and maintenance of them, is prohibited upon the paines aforesaid, viz. the paines contained in the said supposed Act of 20 E. 3. cap. 1. upon paine to be at our will, body, lands, and goods; to do thereof as shall please us: which without question was never extended to losse of life, &c. but to imprisonment, as common experience daily teacheth. For, Hæc est voluntas Regis, viz. per Justiciarios suos & per legem, &c. Therefore, as by the Record appeareth, Sir William Thorpe was pardoned and restored to all his lands. And we were desirous to see the Record of the Act of 20 E. 3. cap. 1. but there is no Record of any such Act in the Parliament Roll. And the very frame and composition of it seemeth to be but a rehearsall of a Commandement from the King: for the letter of it beginneth. First, we have commanded all our Justices, that they shall from thenceforth do equall law, &c. and therefore justly omitted out of the Parliament Roll of Acts of Parliaments: and yet the imprinting of it necessary, for that the fourth Chapter of this Parliament hath reference to the paines contained in it.

2 R. 3. fo. 11.

See 8 R. 2. cap. 3. Rot. Parl. 10. R. 2. nu. 24.

Vid. 1 H. 4. nu 99. & Nota.

It is enacted by Parliament *Anno* 11 *H.* 4. in these words.

Rot. Parl. Anno 11 H. 4. nu. 28. never imprinted.

Item. *Que nul Chancelor, Treasorer, Garden del Privie Seal, Counselor le Roy, Serūts a councell del roy, ne nul auter Officer, Iudge ne ministre le roy, pernants fees ou gages de roy pur lour ditz offices ou services, preigne en nul manner en temps à venir ascun manner de done ou brocage de nulluy pur lour ditz offices & services a faire, sur peine de responder au roy de la treble que ilsint preignont, & de satisfier la partie, & punys al volunt le roy, & soit discharges de son office, service, & councel per touts jours, & que chescun que voiera pursuer en la dit matter, eyt la suite cibien pur le roy, come pur luy mesme, & eit la tierce part del somme, de que la partie est duement convict.*

By this Act of Parliament, which is the judgement of the whole Parliament, it appeareth, that, if that which is imprinted as the first Chapter of 20 E. 3. had been an Act of Parliament, then this statute of 11 H. 4. would never have inflicted this kinde of punishment, which is other, and farre lesse, then that which is mentioned in 20 E. 3. And where it is said in this Act of 11 H. 4. [& punis al volunt le roy] that is, by fine and imprisonment by the Court where the conviction shall be; for, as hath been said, Hæc est voluntas Regis. viz. per Justiciarios suos, & legem suam, & non per dominum regem in camera sua, vel aliter.

2 R. 3. 11. 2.

So as by warrant of this Act of Parliament we have said, that Bribery is a Misprision; so that it is neither treason, nor felony; and it is a great Misprision, for that it is ever accompanied with Perjury.

* True it is, that Sir Thomas Weyland, Chief Justice of the Court of Common pleas, was attainted of felony, but it was not for Bribery, but being guilty

* Plac. de Parl. apud Asherugg in Cro Ep. anno 19. E. 1. Et Hollingsh. Chron. pag. 284, 285. he confessed felony, and abjured.

of

of being accellory to murder, for the which by the Common law he was abjured the Realm.

Likewise Adam de Stratton Chief Baron of the Exchequer, a man of great poſſeſſions and riches, was attainted of felony by him committed: all which I collect upon Records of Parliament the ſureſt guides. For in the Parliament holden in 18 E.1. in the ſame year when he was attainted, I find two petitions, one preferred by himſelf in theſe words, Adam de Stratton petit gratiam regis, quòd reſtituatur ad aliquam partem terrarum ſuarum, & de bonis ſuis quæ habuit tempore quo fuit * viz. 26000.li. Rot.Parl.18 E. 1. fol.5 nu.61. * There is aſpace left in the Record.

The other by Margaret de Boteler in theſe words, Margareta quæ fuit uxor Joh. de Boteler, de qua Adam de Stratton tenuit 12.li.10.s. in London, clamat habere ut eſchaet. Reſponſ. Rex non conceſſit; quia in civitate nulla eſt eſchaeta niſi regis. And at the ſame Parliament fo. 3. it is reſolved, non ſunt niſi tres formæ brevis de Eſchaeta; Quia utlagatus, vel ſuſpenſus, vel abjuravit regnum. And by conſequence Adam de Stratton ſeeing his lands eſcheated, muſt have the judgement of one of theſe three. Which we have added to anſwer ſecret objections that might be made out of the miſtakings of our Chronicles. Et ibid.nu.69.

The reſt of the Juſtices were removed, fined, and impriſoned, ſaving Johannes de Mettingham, and Elias de Beckingham, who to their eternall memory and honour were found upright, and free from all bribery and corruption. Rot.Parl.10 E.1. fol.5.

It was petitioned in Parliament, that the ſtatutes whereby the Juſtices of the one bench or the other ſhould take no reward, ne be of any mans fee, may be obſerved. The Kings anſwer was, [The King hath and will charge ſuch Juſtices to miniſter right, and will puniſh the contrary, and therefore willeth that all ſtatutes made touching them and the Barons of the Exchequer, be made void.] 10 R.2.nu.14.

¶ When any man in judiciall place, &c.] For the difference between bribery and extortion is, that bribery is only committed by him, that hath a judicial place, and extortion may be committed both by him that hath a judiciall place, or by him that hath a miniſteriall office.

And this offence of bribery may be committed by any that hath any judiciall place either Eccleſiaſticall or Temporall. Non accipies perſonam nec munera, (and the reaſon is expreſſed by the Holy Ghoſt) quia munera excæcant occulos ſapientum, & mutant verba juſtorum. Deut.16.19.

If bribery hath ſo great force, as to blind the eyes of the wiſe Judge, and to change the words of the juſt, Beatus ille, qui excutit manus ſuas ab omni munere. Judex debet habere duos Sales; Salem Sapientiæ, ne ſit inſipidus, & Salem Conſcientiæ, ne ſit diabolus.

Though the bribe be ſmall, yet the fault is great: and this appeareth by a Record in the reign of E.3. Quia diverſi Juſticiarii ad audiendum & terminandum aſſignati ceperunt de Johanne Berners qui indictatus fuit, 4. li. pro favore habendo die deliberationis ſuæ, finem fecerunt domino regi per iiij M. marcas, ſo as they paid for every pound a thouſand marks. See before Sir William Thorps caſe, Rot. Parl. 7 R. 2. the Chancellour was accuſed of a bribe of ten pound, and his man four pound and certain fiſh, which, though the things were ſmall, yet it had been puniſhed, if it had been proved. Paſch.17 E.3. Coram Rege. Rot.139.Eſſex. John Berners caſe. Rot.Parl.7 R.2. nu.12.13.

¶ Take any fee, robe, gift, or reward.] This is warranted by the oath abovesaid. Anno 18 E.3.

But admit the party * offereth a bribe to the Judge, meaning to corrupt him in the caſe depending before him, and the Judge taketh it not, yet this is an offence puniſhable by the law in the party that doth offer it. *Since theſe Inſtitutes ſo was it reſolved in the Star-chamber, Trin.6 Car.Rot. in an information againſt Bonham Norton and others.

¶ Brocage.] There is good warrant for this word by the ſaid Act of 11 H.4.

¶ Of any perſon that hath to doe before him any way.] This hath his ground upon the oath aforeſaid, ſo as bribery may be committed not

not only when a ſuit dependeth in foro contentioſo (as it was in the caſe of Sir Fr. Bacon Lo. of S. Alban. Lo. Chancellour of England, who for many exorbitant and ſordid briberies was ſentenced by the Lords of Parliament, which you may read Rot. Parl. Anno 19. Jacobi regis) but alſo when any in Judiciall place doth any thing virtute or colore officii, though there be no ſuit at all. For example, if the Lord Treaſurer for any gift or bracage, ſhall make any Cuſtomer, Controller, or any Officer or Miniſter of the King, this is bribery, for he ought to take nothing in that caſe by the ſtatute of 12 R. 2. but that he make all ſuch Officers and Miniſters of the beſt, and moſt lawfull men, and ſufficient for their eſtimation and knowledge. (An excellent law tending greatly to his Majeſties advantage, to the good uſage and incouragement of Merchants, &c. and generally to the advancement of commerce, trade, and traffique, the life of this Iſland.) Read this ſtatute, for it is of a large extent, and the ſtatute of 5 E. 6. for they are Laws made contra ambitum, and worthy to be put in execution, for they prevent bribery and extortion: for they that buy, will ſell.

2 R. 2. ca. 2. See the ſtatute of 5 E. 6. ca. 16.

Vendit Alexander claves, altaria ſacra:
Vendere jure poteſt, emerat ille prius.

And that ſtatute of 5 E. 6. doth extend as well to Eccleſiaſticall offices, as Temporall, which concern the adminiſtration & execution of juſtice. And it was reſolved in the caſe of Doctor Trever Chancellour of a Biſhop in Wales, that both the office of Chancellour and Regiſter of the Biſhop are within that ſtatute, becauſe they concerne the adminiſtration of juſtice.

Hil. 8 Ja. In Communi banco D. Trevers caſe. See hereafter ca. of Simony, and the 1. part of the Inſtit. Sect. 378. fo. 234.

* L. Earle of M. Lord Treaſurer of England took colore officii divers bribes, &c. And namely where the Farmers of the Cuſtomes exhibited a petition to have certain juſt allowances, which his Majeſty referred to the ſaid Lord Treaſurer, who long delayed the petitioners, untill they gave him ſeverall bribes, and then he gave way to relieve them. For this, and other his briberies, extortions, oppreſſions, and other grievous miſdemeanours in his ſeverall offices of the Lord Treaſurer, and Maſter of the Court of Wards (no ſuit being in any of thoſe caſes depending) upon complaint, and charge of the Commons in this Parliament, and after evident proof and often hearing of the cauſe, the Lords of Parliament (the Lord Treaſurer being brought to the bar by the Gentleman Uſher and Serjeant at Arms, and kneeling till he was commanded to ſtand up) upon the petition of the Commons by the Speaker gave this judgment againſt him by the mouth of the Lord Keeper in theſe words. This High Court of Parliament doth adjudge: Firſt, that you L. Earl of M. now Lord Treaſurer of England ſhall loſe all your offices which you hold in this Kingdome. 2. And ſhall be for ever uncapable of any office, place, or imployment in this State and Common-wealth. 3. And that you ſhall be impriſoned in the Tower of London during the Kings pleaſure. 4. And that you ſhall pay to our Soveraign the King the fine of 50000. li. 5. And that you ſhall never ſit in Parliment any more. 6. And that you ſhall never come within the Verge of the Kings Court; as by the ſaid Roll of the Parliament appeareth, which is worthy of your reading at large.

* Rot. Parl. 21. Ja. regis.

Anno 21 H. 8. Artic. 18.

In anno 21 H. 8. By Articles under the hands of all the Lords of the Priby Councell, (whereof Sir Thomas Moor then Lord Chancellour was one) and of the principall Judges of the Realme, which I have ſeene, Cardinall Woolſey was charged with divers briberies, namely in the eighteenth Article, in theſe words. Alſo the ſaid Lord Cardinall conſtrained all Ordinaries in England, yearly to compound with him, or elſe he would uſurp half, or the whole of their juriſdiction by prevention, not for good order of the Dioces, but to extort treaſure: for there is never a poor Archdeacon in England but that he paid to him a yearly portion of his living.

21 H. 8. ca. 5. Vide 2 R. 2. Rot. Parl. nu 46.

If any Ordinary, &c. having power by the Act of 21 H. 8. to grant the adminiſtration of the goods of him that dieth inteſtate, or as intеſtate, to the widow or next of kin, &c. take any reward for preferring of any perſon, before another, to the adminiſtration, it is Bribery.

Si

Si quis contra fas & leges adminiſtrarit, vel pro odio, quod in alium habuerit, judicarit perperam, aut denique nummarium ſe Judicem præbuerit, proprii capitis æſtimatione Anglorum jure regi damnatur, niſi quidem legum id accidiſſe inſcitia, &c.

The law before the Conqueſt. Inter leges Canuti cap. 13.

CAP. LXIX.

Of Extortion, Exaction, &c.

This is another great [a] Miſpriſion, becauſe it is accompanied with perjury. Hereof you may read in the First part of the Inſtitutes Sect. 701. See alſo in the Second part of the Inſtitutes W. 1. cap. 26. & cap. 10. And in the Fourth part of the Inſtitutes cap. Chancery, in the Articles againſt Cardinall Woolſey. Article 3. Extortion of Ordinaries. [b] Ranuſiatores hominum, extortionatores hominum: a *Rancunnier*, an extortioner of men.

[c] The Collectors of the Fifteens were committed to priſon, for that they took of every town eighteen pence for an acquittance.

[d] A Coroner was committed to priſon, becauſe he would not take the view of the dead body, before he had received for himſelfe ſix ſhillings eight pence, and for his Clerke two ſhillings, and was fined at forty ſhillings.

[e] If any of the Kings Councell or his Miniſters doe exact a bond of any of his ſubjects, to come to the King with force and arms, &c. when they ſhould be ſent for, ſuch writings are to the Kings diſhonour; for that every man is bound to do to the King, as to his liege Lord, [f] al that appertaineth to him without any manner of writing, (note the generality hereof) and ſuch writings are to be cancelled, as by the Act appeareth.

Hereupon (by Authority of this Parliament) theſe concluſions doe follow. Firſt, whatſoever any ſubject is bound to doe to the King as to his liege Lord, no bond or writing is to be exacted of the ſubject for doing thereof. Secondly, whatſoever bonds or writings are to the Kings diſhonour, are againſt law. Thirdly, whether ſuch bonds or writings be made to the King or any other, the bonds or writings be void.

[g] If a Biſhop or other Eccleſiaſticall Judge, or Miniſter, doth exact a bond or oath of any perſon in any caſe Eccleſiaſticall not warrantable by law, the bond is void, and this exaction is puniſhable by fine, &c. the Record is very long, but worthy to be read. See Rot. Parl. Anno 8 H. 4. nu. 15, 16, 17, 18, 19, 20. excellent matter concerning fees in Courts of Juſtice, and in the Kings houſhold.

[h] Officialis indictatus de citando, & affligendo plurimos, non poteſt dedicere, & petit quod admittatur ad finem.

[i] Contra ſequeſtratores, commiſſarios & alios offic' epiſcoporum pro captione feodorum, priuſquam debent, pro teſtamentis probandis.

[k] The extortion of the Clergy, and of their Miniſters to be enquired of by Juſtices of Peace.

Reſolutions upon the ſtatute of 21 H. 8. ca. 5.

If a man makes his Teſtament in paper, and dieth poſſeſſed of goods and chattels above the value of forty pound, and the Executor cauſeth the Teſtament to be tranſcribed in parchment, and bringeth both to the Ordinary &c. to be proved; It is at the election of the Ordinary whether he will put the Seal and Probate to the originall in paper, or to the tranſcript in parchment: but whether he put them to the one or the other, there can be taken of the Executor, &c. in the whole but five ſhillings, and not above: viz. two ſhillings ſix pence to the Ordinary, &c. and his Miniſters, and two ſhillings ſix pence to the Scribe

[a] Lib. 10. fo. 101. & 102. Beawſages caſe. See the 1. part of the Inſtitutes Sect. 701. Verb. [Exortioners] 2. part of the Inſtit. W. ca. 26. The 4 part of the Inſtitutes. ca. Chancery, in the Articles againſt Cardinall Woolſey, Art. 3.
[b] Trin. 28 E. 3. Coram Rege Rot. 37. Eborum.
[c] Hil. 20 E. 3. Coram Rege Rot. 159. Norff.
[d] Ibidem in the ſame Roll.
[e] 1 E. 3. Stat. 2. ca. 15.
[f] Nota.
[g] Int. Inquiſit. apud Lanceſton Coram Rogero Loveday & Waltero de Wynborn An. 6 E. 1. Cornub.
[h] Mich. 22 E. 3. Coram Rege Rot. 181. Eborū.
[i] Hil. 23 E. 3. Coram Rege.
[k] Rot. Parl. 3 R. . nu. 38, 39. 1 H. 5. nu. 23, 24.
[l] Mich. 6 Jacobi. Rot. 1301. in Comuni Banco. Int. Edw. Neale Informer, &c. et Jacobū Rowſe officiall' infra Archidiaconat' de Huntingdon Defendant per le Chief Juſtice, Walmeſly, Warburton, Daniel, & Foſter.

for regiſtring the ſame: or elſe the ſaid Scribe to be at his liberty, to refuſe thoſe two ſhillings and ſix pence, and to have for writing every ten lines of the ſame Teſtament, whereof every line to contain ten inches, one penny.

For puniſhment of Eccleſiaſticall Judges for extortion. See Rot. de Inquiſit. in Com. Eborũ, Somerſet. &c. Anno 4 E. 1. in Theſauro. De judicibus Eccleſiaſticis dicunt, &c. Rot. Parl. 8 E. 3. nu. 9. The ſtatute of 31 E. 3. cap. 4. Paſch. 32 E. 3. Coram Rege. Rot 27. Rot. Parl. 50 E. 3. nu. 9. 1 R. 2. nu. 109. 2 R. 2. nu. 40. 13 R. 2. nu. 38. 39. 7 R. 2. nu. 53. The Statute of 3 H. 5. ca. 4.

If the Executor deſire that the Teſtament in paper may be tranſcripted in parchment, he muſt agree with the party for the tranſcripting; but the Ordinary, &c. can take nothing for it, nor for the examination of the tranſcript with the originall, but onely two ſhillings ſix pence for the whole duty belonging to him. Where the goods of the dead doe not exceed an hundred ſhillings, the Ordinary, &c. ſhall take nothing, and the Scribe to have only for writing of the Probate ſix pence, ſo the ſaid Teſtament be exhibited in writing with wax thereunto affixed ready to be ſealed. Where the goods of the dead doe amount to above the value of an hundred ſhillings, and doe not exceed the ſumme of forty pound, there ſhall be taken for the whole but three ſhillings ſix pence, whereof to the Ordinary, &c. two ſhillings ſix pence, and twelve pence to the Scribe for regiſtring the ſame. Where by cuſtome leſſe hath been taken in any of the caſes aforeſaid, there leſſe is to be taken. And where any perſon requires a copy, or copies of the Teſtament ſo proved, or Inventory ſo made, the Ordinary &c. ſhall take for the ſearch, and making of the copy of the Teſtament or Inventory, if the goods exceed not an hundreth ſhillings, ſix pence, and if the goods exceed an hundreth ſhillings, and exceed not forty pound, twelve pence. And if the goods exceed forty pound, two ſhillings ſix pence, or to take for every ten lines thereof of the proportion before rehearſed, a penny.

Mich. 20 Jacobi. in Camera Stellata, in Sir Io. Bennets caſe.

When the party dies inteſtate, the Ordinary may diſpoſe ſomewhat in pious uſes, notwithſtanding the ſaid Act of 31 E. 3. but with theſe cautions. 1. That it be after the Adminiſtration granted, and Inventory made, ſo as the ſtate of the inteſtate may be known, and thereby the ſum may appear to be competent. 2. The Adminiſtrator muſt be called to it. 3. The uſe muſt be publique and godly. 4. It muſt be expreſſed in particular. And 5. There muſt be a decree made of it, and entred of record: So in caſe of commutation of penance, it muſt be after ſentence, and mutatis mutandis, ut ſupra.

2 H. 4. ca. 10.

Whereas twenty, forty, or an hundred be indicted of one felony, or one treſpaſſe, and all plead to an iſſue, as not guilty, the Clerk of the Crown of the Kings Bench, ought not to take for the Venire facias, or for the entring of the plea, above two ſhillings, but the ſaid Clerk did take for every ſuch name by extortion two ſhillings. It is ordained and eſtabliſhed, that the ſaid Clerk of the Crown, ſhall take no more then hath been duly uſed of old time. And moreover our Soveraign Lord the King hath charged the ſaid Juſtices of the Kings Bench, that no extortion be done in this behalf in the Bench aforeſaid.

2 H. 4. ca. 8.

The Chirographer of the King in the Common Bench for making and writing of every Fine levied four ſhillings, and no more, upon pain (if he take more) to loſe his office, be expelled the Court, one years impriſonment, and to pay to the party grieved his treble damages.

2 H. 4. ca. 23.

The fees to the Marſhall of the Marſhalſea of the Kings houſe, you may read in the ſtatute of 2 H. 4. Vide 9 R. 2. cap. 5.

33 H. 8. ca. 39.

If any Auditor of the Exchequer, Dutchy of Lanc', or Court of Wards take more then three ſhillings foure pence, for the enrolment of any Letters Patents, Decree, Grant, or Indenture of Leaſe, he ſhall forfeit, for every penny ſo taken, ſix ſhillings eight pence.

Munera ne capias, uncus latet hamus in eſca.
Nulla carent viſco munera, virus habet.

CAP.

CAP. LXX.

Of Uſury.

VSury is a contract upon the lone of money, or giving dayes for forbearing of money, debt, or duty, by way of lone, chevisance, shifts, sales of wares, or other doings whatsoever. Usura dicitur ab usu & ære, quia datur pro usu æris: or Usura dicitur, quasi ignis urens. 37 H.8.ca.9. 13 Eliz.ca.8.

And first, Usury is directly against the law of God. And the reason wherefore it was permitted by the law of God for an Hebrew to an Infidell, was; because it was a mean either to exterminate, or to depauperate them, as they should not be able to invade, or injure Gods people. Deut.cap.23. Exo.22. Levit.25. Ezek.2. Psal.15.

c And it is adjudged by authority of Parliament, that all Usury being forbidden by the law of God, is sinne, and detestable. And it is also enacted by Parliament, that all usury is unlawfull, that is to say, against the lawes of the Realme. Let us therefore see what former lawes have provided herein. c 13 Eliz.cap.8. 21 Iac.cap.17.

d Si quis de usura convictus fuerit, omnes res suas amittat. d See the cust.de Norm.cap.20. Int.leges S.Edw.

e Usurarii omnes res, sive testatus, sive intestatus decesserit, domini Regis sunt: vivus autē non solet aliquis de crimine usuræ appellari, nec convinci, sed inter cæteras regias inquisitiones solet inquiri, & probari aliquē in tali crimine decessisse per 12 legales homines de viceneto & per eorum sacramentū. Quo probato in Curia, omnes res mobiles, & omnia catalla, quæ fuerunt ipsius usurarii mortui, ad usus domini Regis capientur, penes quemcunq; inveniantur res illæ. Hæres quoq; ipsius, hac eadem de causa exhæredatur secundum jus regni; & ad dominū, vel dominos revertetur hæreditas. Sciendum tamen, quod si quis aliquo tempore usurarius fuerit in vita sua, & super hoc in patria publicè defamatus, si tamen à delicto ipso ante mortem suam destiterit, & pœnitentiam egerit: post mortem ipsius, ille, vel res ejus lege usurarii minime censebuntur. Oportet ergo constare quòd usurarius decesserit aliquis ad hoc, ut de eo tanquam de usurario post mortem ipsius judicetur, & de rebus ipsius, tanquam de rebus usurarii disponatur. e Glanvil.lib.7. cap.16.

Vide testatut de Merton cap.5. & Fleta lib.2.cap.50. f Manifestus usurarius est intestabilis. Merton.cap.5. f Fleta lib.2. cap.50.

g Et inter les constitutions ordeins p les viels royes Alfred, &c. ordeine fuit que les chattels des usurers fuissent al Roy, & que les heritages des usurers remeissent escheats al seigniors des fees, & ne serr' interre in Sanctuary. g Mirror cap.1. § 3. & cap.5. § 1. Parl.50 E.3.nu. 58.

h Item, atrox injuria est, quæ omnium mobilium amissionem confert, & legem liberam aufert, quæ locum habet in usurariis Christianis. b Fleta lib.2.c.1.

i Ad 16 Artic.de usuris respondetur: Quod licet Episcopis pro peccato illo pœnitentiam usurario injungere salutarem. Sed quia committendo usuram, usurarius furtum committit, & super hoc est convictus, catalla & tria usurarii, sicut catalla furis, sunt regis, & si qui sequi voluerint contra hujusmodi usurarium, restituantur eis bona sua, quæ ipsi usurarii per usuram extorserunt. i Rot.Parliam. 51 H.3.Petitiones Cleri.

k And it appeareth by Bracton, that it was an Article of the charge of Inquiry by Justices in Eire De usurariis Christianis mortuis, qui fuerunt, & quæ catalla habuerunt, & quis ea habuerit. Et quòd nullus recipiet usuram arte vel ingenio. And divers were indicted for taking of usury before Justices in Eire, and some were pardoned by the King, and others not. k Bract.lib.3. fo.116,117. Fleta lib.2.c.1. Cap.itineris ver. Mag.Cart.part 1. fo.151. Rot.pat.3 E.1. m.10.19,20,21, 22. 36 Rot. clauſ. 2 E.1.m.1.

In ancient time a great revenue by reason of the usury of the Jewes came to the Crown: For between the 50 year of H.3. and the 2 year of E.1. which was not above seven years compleat, there was paid into the Kings Coffers Four hundred and twenty thousand pounds of and for the usury of the Jewes. And yet that excellent King for divers weighty reasons worthy to be written in letters of gold, did by Authority of Parliament utterly prohibit the same, in these l Rot.pat.3 E.1. nu.14,17,26. Willielm. Middleton reddit computum.

Vet. Mag. Cart. 2. part fo. 58, 59. Stat. de Iudaismo. See the 2. part of the Institutes, Stat. de Iudaismo and the Exposition upon the same.

words. Forasmuch as the King hath perceived that many evils and dishherisons of the good men of his land had come to passe by the Usuries which the Jews have done in times past, and that many sins and offences have risen thereupon; albeit he and his Ancestours have had great profit thereby of the Jews; notwithstanding for the honour of God, and for the common profit of his people, the King hath ordained, and established, that no Jew shall take Usury, &c. Before this time Jews were divers times banished this Realm, but still they returned again. But this wise and worthy King by Authority of Parliament banishing their Usury, put the Jews into perpetuall exile into forraine Countries, where usury was tolerated. By which Act it appeareth that the suppression of Usury tendeth to the honour of God, and the common profit of the people.

By which Authorities and Records, and by many others that might be remembred, it appeareth that by the ancient laws of this Realm Usury was unlawfull, and punishable, although the punishment was not always one, but sometime greater, and sometime lesser: And therefore at the Parliament holden in the fifteenth year of E. 3. It was enacted, and declared, according as it had been sometime holden, that the King and his heirs should have conusance of Usurers after their death, and that the Ordinary of holy Church should have conusance of Usurers alive, forasmuch as to them it appertains, to compell them by the censures of holy Church, for the sin, to make restitution of usuries taken against the law of holy Church. But this statute was afterward repealed, as hereafter shall appear.

15 E. 3. c. 5.

Hil. 6 E. 3. Coram Rege Rot. 130. Norff.

Johannes Hopd convictus per Juratores pro Usura capiend' 11. s. 8. d. pro 20. s. præstand', et sic de similibus.

Vide 26 E. 3. fo. 71. Moignes case.

Many of the Citizens of London giving over trade and traffick (which is the life of the Common-wealth, and specially of an Iland) and betaking themselves to live upon usury, Sir William Walworth being Lord Mayor, by the advice of the Aldermen his brethren, took such good and strict order for the execution of laws, and for suppression of Usury within the City of London, as the Commons in Parliament put up a petition to the King in these words, [That the order that was made in London against the horrible vice of usury, might be observed throughout the whole Realm] Whereunto the King answered; That the old law should continue.

Rot. Parl. 50 E. 3. nu. 158. Vide Rot. Parl. 6 R. 2. nu. 57. 14 R. 2. nu. 24.

After this Sir John Northampton Mayor of the City of London, by the advice of the Aldermen his brethren, took more strict order for the suppression of unlawfull Usury within the City of London: which had so good successe, as the Commons in Parliament petitioned the King in these words. The Commons pray, that against the horrible vice of usury (then termed Scheles) and practised as well by the Clergy as Laity, the order made by Iohn Northampton late Maior of London may be executed through the Realm. Whereunto the King answered, The King willeth those Ordinances to be viewed, & if they be found to be necessary, that the same be then affirmed. And here it is to be observed, that of ancient time the notable Merchants of London detested Usury, & Dry exchange. By the statutes of 3 H. 7. and 11 H. 7. all Usury is damned and prohibited, and there it is called Dry exchange. So as usury is not onely against the law of God, & the laws of the Realm, but against the law of nature. Usura contra naturam est, quia usura sua natura est sterilis, nec fructum habet.

Rot. Parl. 14 R. 2. nu. 74.

3 H. 7. c. 5, 6. 11 H. 7. c. 8. Vide 5 E. 6. c. 20.

But now by the statutes of 37 H. 8. and 13 Eliz. all former Acts, Statutes and Laws ordained and made, for the avoiding or punishment of Usury, are made void, and of none effect. So as at this day, neither the Common law, nor any statute is in force, but onely the statutes of 37 H. 8. 13 Eliz. and 21 Jac. And the Ecclesiasticall jurisdiction is saved by the said statute of 13 Eliz. as thereby it appeareth. For the Exposition of which statutes of 37 H. 8. and 13 El. see in my Reports, viz. Lib. 3. fo. 80, 81. Lib. 5. fo. 67, 70. Lib. 9. 26.

37 H. 8. c. 9. 13 Eliz. c. 8. 21 Jac. cap. 17.

CAP.

CAP. LXXI.

Of Simony and corrupt Preſentations.

Simony. Simonia eſt vox eccleſiaſtica, à Simone illo Mago deducta, qui donum Spiritus ſancti pecuniis emi putavit.

Againſt Simony, &c. the ſtatute of 31 Eliz. is made in theſe words.

Simony deſcribed by the Act following.

Stat. de 31 Eliz. cap. 6.

BE it enacted that if any perſon or perſons, bodies politique or corporate, ſhall or do for any ſumm of mony, reward, gift, profit or benefit, directly, or indirectly, or for, or by reaſon of any promiſe, agreement, grant, bond, covenant, or other aſſurance, of or for any ſumm of mony, reward, gift, profit or benefit whatſoever, directly, or indirectly, preſent, or collate any perſon to any benefice with cure of ſoules, dignity, prebend, or living Eccleſiaſticall, or give, or beſtow the ſame for, or in reſpect of any ſuch cauſe or conſideration: * That then every ſuch preſentment, collation, gift, and beſtowing, and every admiſſion, inſtitution, inveſture, and induction thereupon ſhall be utterly voyd, fruſtrate, and of none effect in law; and that it ſhall, and may be lawfull to and for the Queens Majeſtie, her heires and ſucceſſors, to preſent, collate unto, or give, or beſtow every ſuch benefice, dignity, prebend and living Eccleſiaſticall for that one time, or turne onely, and that all and every perſon and perſons, bodies politique and corporate, that ſhall give or take any ſuch ſumm of mony, reward, &c. ſhall forfeit and loſe the double value of one yeeres profit of every ſuch benefice, dignity, prebend and living Eccleſiaſticall. And the perſon ſo corruptly taking, procuring, ſeeking, or accepting any ſuch benefice, dignity, prebend, or living, ſhall thereupon, and from thenceforth be adjudged a diſabled perſon in law to have, or enjoy the ſame benefice, dignity, prebend, or living Eccleſiaſticall.

See the 2. part of the Inſtit. in the expoſition of the ſaid Act of 31 El. *Injuſtum eſt illa vendere quæ gratis diſtribui debet.* vide Matth. ca. 10. ver. 8.

* Nota, the ſtatute doth not make the bond, promiſe, covenant or other aſſurance void, but the preſentment, &c. and ſo it was adjudged, Paſch. 40. Eliz. Rot. 1745. in Commni Banco, between Gregory plaintif and Oldbury defendant. Nota differentiam inter malum in ſe againſt the common law, & malum prohibitum by ſtatute law, & malum in ſe againſt the Common law, and malum prohibitum by the Civill or Canon law; whereof the Judges of the Common law in theſe caſes take no notice.

This is the text of this part of the Act, now let us proceed to the expoſition hereof, being a neceſſary rule to be put in execution.

¶ Preſent or collate.] This is not onely intended, where the perſon preſenting, or collating hath right to preſent, or collate; but alſo where any perſon, or perſons, bodies politique and corporate, do uſurp, and have no title to preſent or collate. And ſo it was adjudged in caſe where the uſurpation was to a Church of the King.

Mich. 13 Ja. in Quare imped. Betweene the King & the B. of Norwich. Tho. Cole and Robert Secker, which began Paſch. 13. Iac. Rot. 21. for the Vicarage of Haverell in Suffolk.

Sed quando præſentatio & jus patronatus ſunt temporalia, quæritur quomodo fit Simonia per donum pecuniæ pro illis: Reſpondendum eſt, quod jus patronatus & præſentatio dicuntur ſpiritualia, reſpectu rei, ad quam præſentatur, quæ ſpiritualis eſt. Vide Linwood cap. de Jurejurando. fo. 80.

¶ Shall be utterly void and of none effect.] But here is to be obſerved a diverſity between a preſentation or collation made by a rightfull patron, and an uſurper. For in caſe of a rightfull patron, which doth corruptly preſent, or collate, by the expreſſe letter of this Act the King ſhall preſent: but where one doth uſurp, and corruptly preſent or collate, there the King ſhall not preſent, but the

the rightfull patron: for the branch that gives the King power to present, is onely intended, where the rightfull patron is in fault, but where the rightfull patron is in no fault, there the corrupt act, and wrong of the usurper maketh the benefice &c. voide, but taketh not away the lawfull title to present from the rightfull patron, and so was it adjudged in the case abovesaid.

Mich. 13 Jac. ubi supra.

Also upon these words, [If any patron without the notice of the person so presented, or collated, doth take reward, &c.] yet by the expresse Letter of this branch the Church &c. is voide, for both the Letter and intention of this Act is to make the admission, institution, and induction of any presentee, that commeth in by a corrupt patron voide. And so was it resolved in the case abovesaid, as it hath been formerly adjudged in the Common place. But where the presentee is not privy, nor consenting to any such corrupt contract, as is prohibited by this Act, because it is no Simony in him, there the presentee shall not be adjudged a disabled person within this Act: for the words of that branch be, And the person so corruptly giving, &c. so as he shall not be disabled, unlesse he be privy to the corrupt contract: and upon the severall penning of these severall branches, the diversity abovesaid was resolved Mich. 13 Jac. ubi supra.

Mich. 41 & 42 El. in communi banco between Baker and Rogers.

¶ Shall forfeit and lose the double value of one yeares profit.] This double value shall be accounted according to the very, or true value, as the same may be letten, and shall be tryed by a Jury, and not according to the extent, or taration of the Church: whereof one was made both of the spiritualties and temporalties in 20 E. 1. 1291. in the time of Pope Nicholas: Of that vide 11 H. 4. fo. 35. F. N. B. 176. & Polichron. lib. 7. ca. 38. Rot. Parl. 18 E. 3. nu. 44. stat. 2. 1 R. 2. nu. 102. 8 H. 6. nu. 15. And the other taration was made in 26 H. 8.

24 E. 3. fo. 35.
38 E. 3. 3.
7 Eliz. Dier. 257.

¶ Be adjudged a disabled person in law.] It was resolved in the case of Mich. 13 Jac. ubi supra, that the King could not dispense with this disability by a Non obstante: for when an Act of Parliament is made that disableth any person, or maketh any thing void, or tortious for the good of the Church, or Common-wealth, in this law all the Kings subjects have an interest, and therefore the King cannot dispense therewith no more then with the Common law: but where a statute prohibiteth any thing upon a penalty, and giveth the penalty to the King or to the King and Informer, there the King may dispense with the penalty, and this diversity is warranted by our books.

5 E. 1. 29. 11 H. 4. 76. 2 H. 7. 6. 11 H. 7. 11. 13 H. 7. 8. b. 29 H. 8. F. N. B. 211. b. Placita com. 502.

* King James referred this case unto Sir Thomas Egerton Lord Chancellor of England, and to the chiefe Justice of the Kings bench. Sir Robert Vernon being Coferer of the Kings house, by reason of which office, he hath the receipt and payment of 40000. li. of the Kings treasure yearely, and payeth the wages beneath the staires, &c. did bargaine and sell the said office for a great summ of money, & for certaine annuities to be paid to Sir Arthur Ingram Knight. The first question was, whether the said office were void by force of the statute of 5 E. 6. ca. 16. The second was, seeing the words of this Act be [shall be adjudged a disabled person in law, to all intents and purposes to have & occupy any such office, &c.] whether the King might dispense with that [disabled.] And upon mature deliberation and hearing of councell learned, they resolved, and so certified the King, that the said office was void by the said bargaine and sale, and that the King could not dispense with the said disability, for the reason and cause abovesaid; and thereupon Sir Marmaduke Darrell was preferred to that office.

* Anno 12 Iac. regis. Sir Arthur Ingrams case upō the statute of 5 E. 6. cap. 16.

Likewise by the statute of 5 Eli. Every person which shall be elected a Knight, Citizen, Burges, or Baron of the Cinque ports for any Parliament, before he shall enter into the Parliament house, shall take the oath of Supremacy appointed by the Act of 1 Eliz. & that he that entreth into the Parliament without taking the said oath, shall be deemed no Knight, Citizen, Burges, or Baron, nor shall have any voice, but shall be, as if he had been never returned, or elected. Here be words that amount to a disability, and therefore that according to the former resolutions the King cannot dispense with the same.

5 Eliz. cap. 1.

¶ It

¶ It is further enacted, that if any perſon ſhall for any ſum of money, reward, &c. *(ut ſupra)* other then for uſuall fees, admit, inſtitute, inſtall, induct, inveſt, or place any perſon in or to any Benefice with cure of ſoules, dignity, Prebend, or other Living Eccleſiaſticall: That then every perſon ſo offending ſhall forfeit and loſe double value, *ut ſupra*; and that thereupon immediately from and after the inveſting, inſtallation, or induction thereof had, the ſame Benefice, &c. ſhall be eſtſoons meerly void, &c.

The reaſon of this clauſe (for I was of this Parliament, and obſerved the proceedings therein) was to avoid haſty & precipitate Admiſſions, Inſtitutions, &c. to the prejudice of them that had right to preſent, by putting them to a Quare Impedit, and no ſuch haſt or precipitation is uſed, but for reward, &c. as it is to be preſumed.

There be two great enemies to juſtice and right, viz. Præcipitatio, & moroſa Cunctatio.

And albeit the Church is full by the Inſtitution, &c. againſt all, but the King, yet the Church becommeth not void by this branch of this Act, untill after induction.

¶ And that the Patron, &c. ſhall and may preſent, &c.]

This is intended of the rightfull Patron, or of him that hath right to preſent.

¶ And be it further enacted, that if any Incumbent of any Benefice with cure of ſoules ſhall corruptly reſigne, or exchange the ſame, or corruptly take for or in reſpect of the reſigning or exchanging of the ſame, directly or indirectly, any penſion, ſum of money, or benefit whaſoever: That then as well the giver as the taker, &c. ſhall loſe double the value of the money ſo given, and double the value of one years profit. Vid. 14 H. 4. 19.

By another branch of this Act it is provided, That if any perſon or perſons ſhall or doe receive, or take any money, reward, &c. *Vt ſupra*, (ordinary and lawfull fees onely excepted) for or to procure the ordaining or making of any Miniſter, or giving any Orders, or licence to preach, ſhall for every offence forfeit and loſe the ſumme of forty pound, and the party ſo corruptly made Miniſter, ſhall forfeit and loſe the ſum of ten pound, and if at any time within ſeaven years after ſuch corrupt entring into the Miniſtry, he ſhall accept or take any Benefice, Living, or promotion Eccleſiaſticall, that then immediately, from and after the induction, inveſting, or inſtallation thereof, or thereunto had, the ſame Benefice, Living, and Promotion Eccleſiaſticall ſhall be eſtſoons meerly void, &c.

¶ Take a Benefice.] This word Beneficium Eccleſiaſticum extendeth not onely to Benefices of Churches Parochiall; but to dignities and other Eccleſiaſticall Promotions; as to Deaneries, Archdeaconries, Prebends, &c. And it appeareth in our * books that Deaneries, Archdeaconries, Prebends, &c. are Benefices with cure of ſoules; but they are not comprehended under the name of Benefices with cure of ſouls within the ſtatute of 21 H. 8. by reaſon of a ſpeciall Proviſo; which they had been, if no ſuch Proviſo had been added, viz. Deans, Archdeacons, Chancellours, Treaſurers, Chanters, Prebend, or a Parſon where there is a Vicar indowed. 33 E. 1. tit. Annuity 51. Vide Canon. 40. 1 Iacobi 1603 the oath againſt Simony, &c. * 9 E. 3. 22. 10 E. 3. 1. 29 E. 3. 44. Regiſt. 58. 21 H. 8. ca. 13. verſ. finem. l. 7.

¶ If any perſon or perſons, bodies politique or corporate, which have election, nomination, voice, or aſſent in the choiſe, election, preſentation

ſentation or nomination of any Scholar, Fellow or any other perſon to have room, or place in any Church Collegiat or Cathedrall, Colledges, Schools, Hoſpitals, Halls, or Societies, ſhall take or receive any money, fee, or reward, &c. the place, room, office, &c. of the offender ſhall be void, &c.

Like caſes in Pl. com. 176. upon the ſtatute of 32 H.8. of Cond. Dier 20 Eliz. upon the ſtatute of 27 H.8. of Uſes.

¶ Which have election, preſentation, &c.] This Act being a law perpetuall, theſe words extend not onely to ſuch perſon and perſons, &c. as at that time had election, preſentation, &c. but to all and every perſon and perſons, that at any time hereafter ſhould have election, preſentation, &c. otherwiſe the law ſhould be but temporary, which ſhould be directly againſt the meaning of the makers of the Act. And by the ſame reaſon this Act extendeth not onely to Churches, Colledges, Schools, Hoſpitals, Halls, and Societies founded at the time of the making of the Act, but to all ſuch as ſhould be erected or founded after.

¶ And if any Fellow, Officer, or Scholar in any of the Churches, Colledges, &c. *ut ſupra.* contract or agree for any money, reward, &c. for the leaving, or reſigning up of the ſame his room or place to any other, &c. ſhall forfeit & loſe double the ſum of money, &c. ſo received, and every perſon by whom or for whom any money, &c. ſhal be given, &c. ſhall be incapable of that place or room for that time or turn, &c. And it is further enacted, that at the time of every ſuch election, preſentation or nomination, as well this preſent Act, as the orders, and ſtatutes of the ſame places concerning ſuch election, preſentation or nomination, ſhall then and there be publiquely read, upon pain to forfeit and loſe the ſum of forty pound, &c. whereof, the one moity to him that will ſue, and the other moity to the Church, Colledge, &c.

I have read ancient Verſes concerning Simony, and other corrupt entries into Churches, which are not unneceſſary, in deteſtation of them, to remember.

Quatuor Eccleſias portis intratur in omnes,
Cæſaris & Simonis, Sanguinis, atque Dei.
Prima patet magnis, nummo patet altera, charis
Tertia, ſed paucis quarta patere ſolet.

Foure doors hath every Church, and all but one forebod,
(Whereof unſeen ſome may be peradventure)
Of Cæſar, Simony, of Kindred, and of God:
And each Church-man by one of theſe doth enter.
Great mens command doth open wide the firſt,
At next by money enter many one,
The third to weak Allies, but (for the Church the worſt,)
Gods dore doth open to a few or none.

7 E. 3. 39. 2
27 E. 3. 89.
29 E. 3. Preſent. al egliſe. Fitz. 171
8 E. 2. preſent. 10. Fitz. N. B. 33. S.
24 E. 3. 29.
a *Jerome.*
3 H. 6. tit. damages. 17 adjudge. See the 1. pt of the Inſtit. W. 2. ca. 5. Lib. 6. fo. 50. & 51. Lib. 5. 58, 59. Speccot.
a Vide Linwood ubi ſupra.

To conclude this chapter with this, that Simony is odious in the eye of the Common law: for a Garden in ſocage of a manor, whereunto an Advowſon is appendant, ſhall not preſent to the Church, becauſe he can take nothing for the preſentation, for the which he may account to the heir; a therefore the heir in that caſe ſhall preſent of what age ſoever. And if an heir of tenant in capite, hath livery cum exitibus, yet ſhall the heir not preſent to an Advowſon, becauſe no iſſues or profit can be taken thereof.

* Latro eſt qui aurum ex religione ſectatur.

And the Common law would have the Patron ſo farre from Simony, as it denied him to recover damages in a Quare impedit, or Aſſiſe of Darrein Preſentment, before the ſtatute of W. 2. cap. 5.

a Simony is the more odious, becauſe it is ever accompanied with Perjury, for the preſentee, &c. is ſworn to commit no Simony.

CAP.

CAP. LXXII.

Of Monomachia, Single combate, Duell, Affrays, and Challenges, and of Private revenge.

This ſingle combate between any of the Kings ſubjects, of their own heads and for private malice, or diſpleaſure, is prohibited by the laws of this Realm: for in a ſetled State governed by law, no man for any injury whatſoever, ought to uſe private revenge; for revenge belongeth to the Magiſtrate, who is Gods Lieutenant. And the law herein is grounded upon the law of God. Vindicta eſt mihi, & ego retribuam, dicit Dominus. Vengeance is mine, and I will repay it, ſaith the Lord. Qui vindicari vult, inveniet vindictam à Domino, & peccata illius ſervans ſervabit. He that will revenge, ſhall finde vengeance from the Lord, and he will ſurely keep his ſins in remembrance. Deut. 32. 35. Rom. 12. 19. Eccleſiaſticus 28. 1. Gen. 34. ver. 25. & 30. of Simeon and Levi.

It is alſo againſt the law of nature and of nations, for a man to be Judge in his own proper cauſe, Judex in propria cauſa, eſpecially in Duello, where fury, wrath, malice and revenge are the rulers of the judgement. See more of private revenge, cap. Miſprision, in [Crimen commiſſionis.]

But it is objected, that this ſingle combat may be undertaken for revenge, and preſervation of the honour of the party grieved. *Object.*

1. The honour or eſtimation of the party may more juſtly and notoriouſly be revenged, and repaired by the Magiſtrate in publique, then by the party in private. 2. There is nothing honourable, that is againſt the laws of his Country, and the law of nature and nations. 3. Whatſoever is againſt the law of God is impious and diſhonourable. 4. The eminent danger of the parties ſeeking private revenge: firſt, concerning the ſoules of both of them, as well of him that killeth (who is vir ſanguinis) as of him that is ſlain, and dieth in his malice and as to the world, he that ſlayeth is in worſe caſe, then he that is ſlain. For the murderer loſeth not only his lands and goods, but his life alſo and his honour, which he ſo much reſpected: for by his attainder his bloud ſhall be corrupted, and if he were noble, or gentle before, he thereby becomes ignoble and baſe, and he that is ſlain by law loſeth none of them: ſo as hereof it is truly ſaid, Infelix pugna, ubi majus periculũ incumbit victori, quam victo. 5. Not only the ſoul of man, but the body alſo, was originally made to the Image of God, Quicunque effuderit humanum ſanguinem, fundetur ſanguis illius, ad imaginem quippe Dei factus eſt homo. Who ſo ſheddeth mans bloud, by man ſhall his bloud be ſhed, for in the image of God made he man. Solus Deus, qui vitam dat, vitæ eſt Dominus; nec poteſt quiſquam eam juſte auferre niſi Deus, vel gerens authoritatem Dei, ut Judex. And this was the reaſon, that amongſt Chriſtians it was not lawfull for the Lord to kill his Villain. *Reſpons.* Gen. 9. 6.

In ancient time ſo much the law did reſpect honour, & order, as heare what Britton ſaith. Si treſpas ſoit fait en temps de peace a Chivaliers, ou a autres gents honorables per Ribaudes ou autres viles perſons, ſi le ferue ſoit per felony, &c. ſauns deſert del Chivalier, que le Ribaude perdra ſon poigne dount il treſpaſſa. Brit. c. 25. f. 49. b.

And many Ordinances, Laws, and Acts of Parliament, which doe prohibit the pardon of wilfull murder, are alſo grounded upon the law of God, to the end none ſhould offend in hope of pardon. * Non accipies precium ab eo qui reus eſt ſanguinis, ſtatim enim & ipſe morietur. Ne polluatis terram habitationis veſtræ, quæ cruore maculatur; nec aliter expiari poteſt, niſi per ejus ſanguinem, Glouc. 6 E. 1. c. 9. 2 E. 3. ca. 2. 4 E. 3. ca. 13. 14 E. 3. cap. 15. 13 R. 2. St. 2. c. 1. Read theſe ſtat. * Num. 35. 31. 33.

See before in the chapter of Murder.

nem, qui alterius ſanguinem effuderit. Ye ſhall take no ſatisfaction for the life of a murtherer, which is guilty of death, but he ſhall be ſurely put to death: ſo ye ſhall not pollute the land wherein you are, for blood defileth the land, and the land cannot be cleanſed of the blood that is ſhed therein, but by the blood of him that ſhed it.

And this law is confirmed by Chriſt himſelf in the Goſpel, and by the laſt book of the holy Scripture. Omnes qui acceperint gladium gladio peribunt. Qui in gladio occiderit, oportet eum gladio occidi.

Mat. 26. 52. Apocal. 13. 10.

Affray. Trin. 10 E. 3. Coram Rege, Rot. 87. Northt.

But albeit upon the ſingle combate no death enſue, nor blood drawn, yet the very combate for revenge is an Affray, and a great breach of the Kings peace, an affright and terrour to the Kings ſubjects, and is to be puniſhed by fine and impriſonment, and to find ſureties for their good behaviour; for it is Vi & armis, & contra pacem domini regis, &c. and in reſpect of incrochment upon royall Authority for revenge, it is contra coronam & dignitatem.

4 H. 6. fo. 10. 8 E. 4. fo. 5.

An Affray is a publique offence to the terrour of the Kings ſubjects, and is an Engliſh word, and ſo called, becauſe it affrighteth and maketh men afraid, and is eſpecially in a Leet as a common Nuſans. See the ſtatute of 2 E. 3. c. 3. where it is, [en effraier de la pais,] & the writ grounded upon that ſtatute ſaith, In quorundam de populo terrorem, as it appeareth in F. N. B. fo. 249. f. and the regiſter agreeth with the original, and therefore the printed booke (en affray de la peace) muſt be amended.

And if any ſubject by word, writing, or meſſage challenge another to fight with him, this is alſo an offence before any combate be performed, and puniſhable by law, & it is contra pacē, coronā, & dignitatem. For, Quando aliquid prohibetur, prohibetur & omne, per quod devenitur ad illud. Or ſuch offenders may be puniſhed in the Star-chamber, whereof there be many Preſidents. Now when an affray is made by ſingle combat, any ſtander by, that is no officer, may endeavour to part them, and prevent further danger, and the law doth incourage them hereunto; for if they receive any harm by the Affrayours, they ſhall have their remedy by law againſt them; and if the affrayours receive hurt by the endeavouring only to part them, the ſtanders by may juſtifie the ſame, and the affrayours have no remedy by law. But if either of the parties be ſlain, or wounded, or ſo ſtricken, as he falleth down for dead, in that caſe the ſtanders by ought to apprehend the party ſo ſlaying, wounding, or ſtriking, or to endeavour the ſame by hue and cry, or elſe for his eſcape they ſhall be fined and impriſoned. But if the Sheriff, Juſtice of Peace, Conſtable, or other conſervatour of the peace doe not part the Affrayours for the preſervation of the Kings peace, and apprehend them being within his view, or doe not his uttermoſt endeavour to part and apprehend them, they may be fined and impriſoned for their neglect thereof, for they may command others to aſſiſt them, and therefore the rule holdeth in them, Idem eſt facere, & nolle prohibere cum poſſis: & qui non prohibet, cum prohibere poſſit, in culpa eſt. And if any be commanded to aſſiſt them therein, and refuſe or neglect the ſame, it is a contempt in them to be puniſhed by fine and impriſonment.

Regula.

8 E. 2. Cor. 295. 22 Aſſ. pl. 56.

3 H. 7. 10. b. Bedingfields caſe.

There is a duellum allowed by law depending a ſuit for the triall of truth, whereof we have ſpoken in another place, and as here it appeareth, there is a duellum againſt law: of both theſe an ancient Authour ſaith thus, and firſt of the lawfull: Duellum eſt ſingularis pugna inter duos ad probandum veritatem litis, & qui vicerit probaſſe intelligitur; & quamvis judicium Dei expectetur ibidem, quicunque tamen Monomachiam, i. e. ſingularem pugnam ſponte ſuſceperit vel optulerit homicida eſt, & contrahit mortale peccatum. Et eodem modo judex qui authoritate defert, vel praeſtat, omneſque acceſſores, & conſulentes, faventes & auxiliantes, nec non & ſacerdos qui dat benedictionem.

Fleta li. 1. c. 32. §. Duellum. 2. part of the Inſtit. W. 1. c. 40. Fleta ubi ſupra.

In a Writ of right, if the tenant wage battail by his Champion, and if the Champion after become blind by infirmity, and not ex ſtultitia, he ſhall be diſcharged of the battail. And if a man be appealed of felony, and gage battaile, and after become blind, ut ſupra, he ſhall be diſcharged of the battail, becauſe he

11 H. 3. Tit. droit Fitz. 57.

becommeth

becometh so by the Act of God. And if the Appellant after battail waged become blinde upon any occasion, the Appellee in favorem vitæ shall goe quit. When issue is joyned to be tried by battail, and the triall by battail is become impossible by the Act of God, or by the default of the Appellant, the Appellee goeth free.

And this kinde of battail, in case of Appeals and Writ of right, is by publique authority and course of law, whereunto all the people by an implied consent are parties; and (as some hold) hath his warrant by the word of God by the single battail between David and Goliah, which was stricken by publique authority.

1 Regum c. 17. ver. 4, 5, &c.

King E. 3. in the Sixteenth year of his reign, having war with the French King for his right to the Kingdome of France, out of the greatnesse of his minde, for love of his subjects, the saving of Christian blood, and a speedy tryall of the right, offered the single combate with the French King, but he refused it.

Afterwards also, after long and chargeable wars between the Crowns of England and France, for the right of the Kingdome of France, it was an honourable offer which King R. 2. made to Charles the French King for saving of Christians guiltlesse blood, and to put an end to that bloody and lingring war: which we will rehearse in the very words of the Record it self.

[a] Rex dedit potem Johanni Duci Lancast' Avunculo suo de certis requestis seu oblationibus Carolo Regi Franc' faciend', viz. quod negotium bellicum inter prædictos reges finiatur. 1. Per certamen personarum suarum. 2. Vel aliter inter personas suas cum tribus Patruis ipsorum ipsis utrinque adjunctis. 3. Aut alioquin quod dies congruus assignaretur & locus, quibus sub universali certamine potentiarum suarum finis bello imponi valeat. The Duke of Lanc' according to his Commission made these offers from the King of England to King Charles of France, but he was auditus, sed non exauditus; for King Charles liked none of these offers.

[a] Rot. Francix 7 R. 2. m. 24. The offer of R. 2. to King Charles of France.
1. A single combat between the two Kings.
2. Or a combat between the two Kings and three of their Uncles on either side.
3. Or that a fit day and place might be assigned when under the universall conflict of both their armies an end might be put to the war.

[b] And in Anno Domini 1196. Anno Regni Ricardi primi Octavo, Philip King of France sent this challenge to Richard the first, that King R. would choose five for his part, and he the King of France would appoint five for his part, which might fight in lists for triall of all matters in controversie between them for the avoiding of shedding of more guiltlesse blood. King Richard accepted the offer, with condition that either King might be of the number, but this condition would not be granted.

[b] N. Triver.

[c] These, and the like offers, as they proceeded from high courage and greatnes of mind, so had they been lawfull, if they had been warranted by publique authority.

[c] See the 2. part of the Institutes W. 1. ca. 20.

CAP. LXXIII.

Againſt going or riding armed.

2 E.3.cap.3. Paſch.18 E.3. coram rege.Rot. 146.Midd. 8 R.2.cap.13. the printed book is 7.but it ought to be 8. and ſo recited in 20 R.2. ca.1.Lib.5.fo.72. St-Johns caſe.

Item. IT is enacted, that no man, great or ſmall, of what condition ſoever he be, (except the Kings ſervants in his preſence, and his miniſters in executing *des mandements le Roy*, or of their Office, & ſuch as be in their company aſſiſting them, and alſo upon a Cry made for armes to keep the peace, & the ſame in ſuch places where ſuch things happen) be ſo hardy to come before the Kings Juſtices, or other the Kings Miniſters doing their office, with force and armes, nor bring force in affray of the people, nor to goe nor ride armed by night nor by day, &c. before the Kings Juſtices, or in any place whatſoever, upon pain to forfeit their armor to the King, & their bodies to priſon at the Kings pleaſure, and to make fine, and ranſome to the King, &c.

20 R. cap.2.

Upon this ſtatute two things fall into conſideration. Firſt, what the Common law was before the making of this ſtatute. Secondly, the true ſenſe, and expoſition of this Act. For it appeareth by a Record in 29 E.1. quòd non liceat torneare, bordeare, juſtas facere, aventuras guerare, ſeu ad arma præſumere, ſine licentia regis. Vide Britton fo.29.b. It was called turneamentum decurſus, of turning and winding, in reſpect of the agility, as well of the horſe, as of the man. For in thoſe daies this deed of Chivalry was at random, whereupon great perill enſued. Therefore in the reigne of E.3. for ſafety the Liſt was deviſed. See the ſtatute of 7 E. 2. De defenſione portandi arma, and the ſtatute of W.1.cap.9. & cap.17. W.2.cap.39. and the expoſitions upon the ſame.

Paſch.29.E.1. coram rege.Rot. 101.Eſſex. Paſch.28 E.1. coram Rege. Rot.32.Glouc.

Vet.mag. cart. 2.part.fo.40.b. Rot.Parl.6 E.3. nu.2.& 3. 13 E.3.nu.2. 14 E.3.nu.2. 15 E.3.nu.2. 17 E.3.nu.2. 18 E.3.nu.2. 25 E.3.nu.50. Parl.1.& 25.E.3. Parl.2.nu.5.

It is Lex & conſuetudo Parliamenti, that whereſoever the Parliament is holden, proclamation ſhould be made forbidding wearing of armor, and exerciſe of playes and games of men, women or children, in or about the City, or place where the Parliament is holden. leſt the proceedings in the high court of Parliament pro bono publico, ſhould thereby be hindred or diſturbed.

[a] If any by mutual aſſent, do uſe Juſts or Turneaments, or to play at ſword and buckler, or any other deeds of armes, and the one killeth the other, this is felony, for that it is not lawfull to uſe them without the Kings licence; which agreeth with the record aboveſaid, of 29 E.1.

[a] 11 H.7.fo.23. vide before cap. *Homicide*. Brook Coron.129. See 24 H.8.cap.13. Juſts. Turnies, Bariers, &c.

[b] Willus Jordan inventus fuit vagans armatus de platis, attachiatus, &c. compertum eſt per Juratores, quòd minatus fuit per quoſdam ignotos, & quòd pro ſalvatione vitæ ſuæ, platas prædictas appoſuit ſuper corpus ſuum, tameninvenit ſecuritatem pro bono geſtu ſuo.

[b] Paſch.18 E.3. coram rege.Rot. 146. Nota bene.

[c] The clauſe of the ſtatute of 25 E.3. concerning this matter, we have reſerved to this place. viz.

[c] 25 E.3.cap.2.

[d] And if per caſe any man of this realm ride armed covertly or ſecretly with men of arms, againſt any other to ſlay him, or rob him, or to take & keepe him, till he hath made fine or ranſome, it ſhall not be adjudged treaſon, but it ſhall be judged felony or treſpaſſe, according to the lawes of the realme of old time uſed, and according as the caſe requires. And if in ſuch caſe, or other like, before this time any Juſtices have judged treaſon, and for this cauſe the lands and tenements have come into the Kings hands as forfeit, the chiefe Lords of the fee ſhall have the eſcheats of the tenements holden of them, whether that the ſame tenements be in the Kings hands, or in others, by gift, or in other manner. Saving

[d] See before cap. *High treaſon*. verb. *Ou ſi home levy guerre*. fo.9.

ving alwayes to our Lord the King, the yeare and the waſt, and the forfeiturs of chattels, which pertain to him in the caſes above-named. And that writs of *Scire facias* be granted in ſuch caſe againſt the land tenants without other originall, and without allowing any protection in the ſaid ſuit. And that of the lands which be in the Kings hands, writs be granted to the Sherifs of the Counties, where the lands be, to deliver them out of the Kings hands without delay.

Concerning the point of felony, it muſt be obſerved, that at the making of that ſtatute, and by the laws of the Realme of old time uſed in ſuch caſe, when any purpoſed to ſlay, and declare it by ſuch overt act, voluntas reputabatur pro facto, as hath been ſaid before; and ſo is this branch concerning that point to be underſtood. Vide cap. High treaſon, verb. *Faict compaſſer*, fo. 6.

¶ And that writs of Scire fac. be granted.] Here it may appeare what ſpeedy remedy by Scire fac. the makers of this law gave for reſtitution to be made, where any of the Juſtices had in any of the caſes mentioned in this branch judged it treaſon, which is declared by this law to be againſt law. Scire fac.

Note for reſtitution. See hereafter cap. Reſtitution.

Now let us peruſe the words of the ſaid Act of 2 E. 3.

¶ His miniſters in executing.] By the order of the Common law and ſtatutes of the Realme, the Sherif, or other miniſter of the King in execution of the Kings writs, or proces of law, might after reſiſtance take poſſe comitatus. For, Sequi debet potentia legem, & non antecedere. W. 1. ca. 9. & 17. W. 2. cap. 39. 18 E. 2. Execution, 251. 19 E. 2. ibid. 247. 3 H. 7. fo. 1. & 10. b. 14 H. 7. 8. Lib. 5. fo. 91. Semaynes caſe.

¶ Des mandements le Roy.] That is, of the Kings writs, and proces of law, ſecundum legem & conſuetudinem Angliæ. Though in this Act there be three ſpeciall exceptions, yet the law doth make another exception, and that is, to aſſemble force to defend his houſe, as hereafter ſhall be ſaid.

¶ To come before the Kings Juſtices, or other the Kings miniſters doing their office, with force and armes.] Bracton doth notably write of the diverſity of forces, viz. that there is Vis expulſiva, perturbativa, inquietiva, ablativa, compulſiva, &c. which you may read in him. And then (which is pertinent to our purpoſe) he ſaith: Eſt etiam vis armata, (armis dejectum dico qualitercunque fuerit vis armata) non ſolum ſi quis venerit cum telis, verum etiam omnes illos dicimus armatos, qui habent cum quo nocere poſſunt. Telorum autem appellatione omnia, in quibus ſingulis homines nocere poſſunt, accipiuntur: ſed ſi quis venerit ſine armis, & ipſa concertatione ligna ſumpſerit, fuſtes, & lapides, talis dicetur vis armata; Si quis autem venerit cum armis, armis tamen ad dejiciendum non uſus fuerit, & dejecerit, vis armata dicitur eſſe facta; ſufficit enim terror armorum, ut videatur armis dejeciſſe. Agreeing with that of the Poet, Bracton lib. 4. fo. 162.

Jamque faces & ſaxa volant, furor arma miniſtrat. Virgil.

Britton ſaith, Nous volons, que touts gents pluis uſent judgement, que force. Britton 116. 2.

¶ Nor to bring force in affray of the (paiis, i.) countrey.] This Act is notably expounded by the writ in the Regiſter, and F.N.B. for by that writ it appeareth, that if any doth enter into, or detaine with force any houſes, lands, or tenements, the party grieved may have a writ upon this ſtatute, directed to the Sherif, by force of which writ, if the Sherif finde the force, then if any after proclamation made, (which proclamation is by reaſonable conſtruction to be made for avoiding of bloodſhed) ſhall diſobey, or if it be found by inquiſition, the Sherif is to ſeize their armes and weapons, and to arreſt and take the offenders and commit them to priſon, &c. But note the Sherif cannot reſtore the party grieved upon this writ to his poſſeſſion, [a] no more then he can upon the writ de vi laica removenda, but reſtitution muſt be made by force of the ſtatutes of 8 H. 6. and 21 Jac. [b] And yet in ſome caſe a man may not onely uſe force and armes, but aſſem- See the chapter next before. verb. *Affraye*. Regiſtrum. F.N.B. 249. f. Nota. Vide lib. 5. fo. 9. Semaynes caſe. F.N.B. 54. *a* 8. H. 6. cap. 9. 21 Jac. cap. 25. *b* 3 E. 3. cor. 303. 305. 26 aſſ. p. 22. 21 H. 7. 39.

aſſemble company alſo. As any may aſſemble his friends and neighbours, to keep his houſe againſt thoſe that come to rob, or kill him, or to offer him violence in it, and is by conſtruction excepted out of this Act: and the Sheriff, &c. ought not to deal with him upon this Act; for a mans houſe is his caſtle, & domus ſua cuique eſt tutiſſimum refugium; for where ſhall a man be ſafe, if it be not in his houſe? And in this ſenſe it is truly ſaid,

21 H.7.39. Lib.5.fo.91.b. Semaynes caſe.

Armaque in armatos ſumere jura ſinunt.

But he cannot aſſemble forces, though he be extremely threatened, to goe with him to Church, or market, or any other place, but that is prohibited by this Act.

¶ Nor to goe armed, by night or by day, &c. before the Kings Juſtices in any place whatſoever.] Sir Thomas Figett Knight went armed under his garments, as well in the Palace, as before the Juſtices of the Kings Bench: for both which upon complaint made, he was arreſted by Sir William Shardiſhill Chiefe Juſtice of the Kings Bench, and being charged therewith, he ſaid that there had been debate between him and Sir John Trevet Knight in the ſame weeke, at Pauls in London, who menaced him, &c. and therefore for doubt of danger, and ſafegard of his life, he went ſo armed. Notwithſtanding the Court upon their view awarded, that the armes were forfeited, and thereupon the ſame were ſeiſed, and he commanded to ward in the Marſhalſea during the Kings pleaſure. Sir Thomas prayed to find mainprize, which was denied, untill the pleaſure of the King was known, becauſe he was impriſoned during the Kings pleaſure, according to this ſtatute.

24 E.3.fo.33.

¶ Upon paine to forfeit their armor, &c.] It appeareth before by the caſe of Sir Thomas Figett, that the offender was to be puniſhed according to this Act, but by forfeiture of the armor and impriſonment; but the ſtatute of 20 R.2.cap.1. doth adde fine, and impriſonment.

24 E.3.ubi ſupra. Vide the 4.part of the Inſtitutes. cap *Leet.* 20 R.2.cap.1. Vid.indorſſ.clauſ. 2 E.2.19.22.

¶ And that the Kings Juſtices, in their preſence, &c.] So did Sir William Shardiſhill, as is aboveſaid.

¶ And other miniſters in their bailiwickes, &c.] That is to ſay, Sheriffs, Bailifs of liberties, &c.

¶ Lords of franchiſes] And their bailifs, Maiors, and Bailifs of Cities, and Borowes within the ſame Cities and Borowes, and Borowholders, Conſtables, & Wardens of the peace within their wards ſhall have power to execute this Act. And the Juſtices aſſigned at their comming down ſhall inquire how ſuch officers, and Lords have exerciſed their offices in this caſe, and to puniſh them whom they find, that have not done that which pertained to their office. See 12 R.2.cap.6.

It is to be obſerved, that upon this ſtatute by the reſolution of the Judges a writ was framed, and inſerted into the Regiſter, when any with force & armes enter any lands and tenements, or detaine the ſame with force and armes, directed to the Sheriff, reciting the force, and our Act, (and ſaith) Nos ſtatutum prædictũ inviolabiliter obſervari, & idẽ infringentes juxta vim, & effectũ ejuſdẽ ſtatuti caſtigare facere volentes & puniſte, Tibi præcipimus, &c. publice proclamari facias, &c. As in the writ. And here is a ſecret in law, that upon any ſtatute made for the Common peace, or good of the Realm, a writ may be deviſed for the better execution of the ſame, according to the force and effect of the Act.

Regiſtrum. F.N.B.249.f. 24 E.3.fo.33.

Vide 36 E.3.ca.9. Simile.

Note, Proclamations are of great force, which are grounded upon the laws of the Realme.

CAP.

CAP. LXXIV.

Of Perjury and ſubornation of Perjury, and incidently of Oaths.

EVery perſon which ſhall unlawfully and corruptly procure any witneſſe to commit any wilfull, and corrupt perjury in any matter or cauſe depending in ſuit, and variance, by any writ, action, bill, complaint, or information in any of the Kings Courts of Chancery, Star-chamber, or in any of the Queens Majeſties Courts of Record, or in any Leet, view of Frankpledge, ancient demeſne Court, Hundred Court, Court Baron, or of the Stannary, or elſewhere within any of the Kings Dominions of England or Wales, or the Marches of the ſame: or ſhall unlawfully, and corruptly procure & ſuborn any witneſſe to teſtify *In perpetuam rei memoriam*; That then every ſuch offender ſhall forfeit the ſumme of forty pound, &c. And if any perſon either by ſubornation, or by their own act, conſent or agreement, wilfully & corruptly commit any manner of wilfull perjury by their depoſition in any of the Courts above-mentioned, or being examined *ad perpetuam rei memoriam*; Then every perſon ſo offending ſhall loſe and forfeit twenty pound, and to have impriſonment by the ſpace of ſix moneths without bail or mainprize, &c. the one moity of all which forfeitures to be to the Queen, and the other moity to ſuch perſon or perſons as ſhall be grieved, &c. 5 El. ca. 9.

Albeit by the Common law tryall of matters of fact are by the verdict of twelve men, &c. and depoſition of witneſſes is but evidence to them: yet, for that moſt commonly Juries are led by depoſition of witneſſes, perjury of witneſſes was ſeverely puniſhed by the ancient laws of this Realm; perjury it ſelfe being forbidden by the law of God, [a] Non perjurabis in nomine meo, nec pollues nomen Dei tui. And again, Non perjurabis, reddes Domino juramenta tua.

A falſe witneſſe is called Perjurus, 'quia perperam jurat. [b] Perjury before the Conqueſt was puniſhed ſometime by death, ſometime by baniſhment, and ſometime by corporall puniſhment, &c.

[c] Aſcuns ſont punies per cowper de langues, come ſoiloit eſtre de faux-teſtmoignes. But too ſevere laws are never duly executed. Afterwards it came to be more milde, for [d] Fleta ſaith, Atrox injuria eſt quæ omnium mobilium amiſſionem confert, &c. de perjurio convictis.

Afterwards it came to fine and ranſome, and never to bear teſtimony.

Et queux ſe voillont perjurer pur lower, ou put aſcun doute de aſcun, & ceux ſont reints a noſtre volunt, & mes ne ſoient crus per nul ſerement. And it appeareth in 7 H. 6. that he that is perjured ſhall be fined and impriſoned.

Thomas Vigrus, & duo alii ſunt culpabiles, &c. perjurati pro fractione corbellorum Iohannæ de Huntingfield in ſeperali piſcaria ſua in aqua de Hadfeld.

Qui teſtes de perjurio convincere ſatagit, multo illis plures, producere neceſſe habet.

The puniſhment of Perjury in Jurours for a falſe verdict was ſo ſevere by the Common law, as few or no Juries were upon juſt cauſe corrupted, for the

a Exod. 20. 13. Levit. 19. 11. Mat. 5. 4.

b Leges Edw. c. 3. Ethelſt. c. 10. 25. Edm. c. 6. Canuti ca. 6. & 35. &c. Edw. & Gru. c. 11.

c Mir. ca. 4. § de paines. Int. Leg. Canuti c. 15. Conviciatoti Lingua excidi-tor.

d Fleta li. 2. ca. 1. § Ité Atrox, &c.

Britton fo. 38. 237, 238. 7 H. 6. fo. 25. Hil. 8. E. 1. in Communi banco Rot. 38. Eſſex. Fortеſcue ca. 32.

Vide 1. part of the Inſtitutes. Verb. Attaint. Sect. 514. Glanvill lib. 2. ca. 19. 6 H. 3. Attaint. 72. Bract. li. 4. fo. 292. b. Fleta lib. 5. cap. 21. Britton fo. 245. 8 E. 2. Judgement. 196. 16 E. 3. Ibidem 109. Mich. 3. H. 5. Coram Rege Rot. 14. & 49. Fortеſcue ca. 29.

judgement

judgement againſt them was, 1. Quod amodo amittant liberam legem imperpetuum. 2. Non trahantur in teſtimonium veritatis. 3. Bona & catalla ſua forisfaciant regi. 4. Terræ & tenementa ſua capiantur in manus regis. 5. Quod uxores & liberi ſui amodo amoveantur. 6. Quod terræ & tenementa ſua extirpentur, &c. 7. Quod capiantur, & in Gaolam detrudantur. Which ſheweth how odious perjury was in the eye of the law: and this law doth yet remain in force; but a milder puniſhment is ſet down by the ſtatute of 23 H. 8. wherein the party grieved hath election to ground his writ of Attaint upon this ſtatute, or to take his remedy at the Common law.

23 H.8.ca.23.

For perjury concerning any temporall act, the Eccleſiaſticall Court hath no juriſdiction; and if it be concerning a ſpirituall matter, the party grieved may ſue for the ſame in the Star-chamber. See the ſtatutes of 3 H.7.ca.1. 11 H.7. ca.25.32 H.8.ca.9. And when you have read the caſe in Mich. 7 & 8 Eliz. Dier 242.243. you will confeſſe how neceſſary the reading of ancient Authors and Records is, and the continuall experience in the Star-chamber is againſt the opinion conceived there.

2 H.4.10.
11 H.4.88.
20 E.4.10.b.
22 E.4.
13 El.Dier 301.
Mich.7 & 8 El. Dier 242,243.

And Mich. 10. Jac. in the Star-chamber in the caſe of Rowland Ap Eliza, it was reſolved, that perjury in a witnes was puniſhable by the common law, as hereafter ſhall be ſhewed more at large. But now let us peruſe the words of the ſtatute.

Mich.10 Ja.Rowl. Ap Elizaes caſe. in cam.Stellat.

¶ By any writ, action, bill, complaint, or Information.] See hereafter Verb. Information

Out of theſe words are perjury, and ſubornation of perjury upon an indictment for the King (for example of Riot) as it was reſolved in Flowers caſe, becauſe that perjury upon an indictment is not within the ſtatute. But ſeeing perjury was an offence puniſhable by the Common law, though the indictment of Flower grounded upon this ſtatute was overthrown, yet is ſuch perjury upon an indictment puniſhable, and moſt commonly puniſhed in the Star chamber.

Mich.40 & 41 El. Lib.5.fo.99.in Flowers caſe.

¶ Information.] By this it appeareth, that perjury committed in an Information exhibited by the Kings Attorny, or any other for the King, by any witnes produced on the behalf of the King, is puniſhable either by this Act or by the Common law. And ſo it was reſolved in the ſaid caſe of Rowl. Ap Eliza, which was this. The Kings Attorny preferred an Information in the exchequer againſt Hugh Nanny Eſquire the father, & Hugh Nanny the ſon, & others for intruſion and cutting down a great number of trees, &c. in Penroſe in the County of Perioneth. The Defendant pleaded not guilty, & the tryall being at the bar, Rowl. Ap Eliza was a witneſſe produced for the King, who depoſed upon his oath to the Jury, that Hugh the father and Hugh the ſonne joyned in ſale of the ſaid trees, and commanded the Vendees to cut them down: upon which teſtimony the Jury found for the King, and aſſeſſed great damages, and thereupon judgement and execution was had. Hugh Nanny the father exhibited his bill in the Star-chamber at the Common law, and charged Rowland Ap Eliza with perjury, and aſſigned the perjury, in that he the ſaid Hugh the father never joyned in ſale, nor commanded the Vendees to cut down the trees, &c. And it was reſolved, Firſt, that perjury in a witneſſe was puniſhable by the Common law. Secondly, that perjury in a witneſſe for the King was puniſhable by the Common law, either upon an indictment, or in an information, or by this Act in an information. And the ſaid Rowland Ap Eliza was by the ſentence of the Court convicted of willfull and corrupt perjury.

The caſe of Rowland Ap Eliza in the Star-chamber ubi ſupra.

But for our more orderly proceeding, let us define, or deſcribe what Perjury is in legall underſtanding, both upon this ſtatute, and at the Common law.

Perjury deſcribed.

Perjury is a crime committed, when a lawfull oath is miniſtred by any that hath authority, to any perſon, in any judiciall proceeding, who ſweareth abſolutely, and falſly in a matter materiall to the iſſue, or cauſe in queſtion, by their own act, or by the ſubornation of others. Now let us peruſe the branches of this deſcription.

¶ A

A lawfull Oath. This word Oath is derived of the Saxon word Eoth; and is expreſſed by three ſeverall names, viz. 1. Sacramentum, à ſacra, & mente, becauſe it ought to be performed with a ſacred and religious mind. Quia jurare, eſt Deum in teſtem vocare, & eſt actus divini cultus. 2. Juramentum à Iure, which ſignifyeth law and right, becauſe both are required and meant, or becauſe it muſt be done with a juſt and rightfull mind. 3. Jusjurandum compounded of two words, à jure & jurando, in the Common law Sacramentum is moſt commonly uſed: in our books and ancient ſtatutes publiſhed in French, Serement, of the French word Serment is uſed.

Serment or ſacrement i. Sacrement, i. Sacramentum. Fleta li. 5. ca. 2. Brit. ca. 97. fo. 23. 8. b. 19. 74. 134. 165. 236. b. Fleta li. 5. ca. 21.

An Oath is an affirmation or teſtimony by any Chriſtian of any thing lawfull and honeſt, before one or more, that have authority to give the ſame for advancement of truth and right, calling Almighty God to witneſſe, that his teſtimony is true. And it is twofold, either aſſertorium ut de præterito, ſicut teſtes, &c. ſeu promiſſorium de futuro, ſicut judices, juſticiarii, officiarii, &c. So as an oath is ſo ſacred, and ſo deeply concerneth the conſciences of Chriſtian men, as the ſame cannot be miniſtred to any unleſſe the ſame be allowed by the Common law, or by ſome Act of Parliament; neither can any Oath allowed by the Common law or by Act of Parliament be altered, but by Act of Parliament. It is called a corporall oath, becauſe he toucheth with his hand ſome part of the holy Scripture.

So reſolved Ann. 26 El. in the caſe of the underſherif.

The oath of the Kings Privy Councell, the Juſtices, the Sheriffe, &c. was thought fit to be altered and inlarged, but that was done by authority of Parliament. For further proofe whereof, and of the matters aboveſaid, ſee the ſtatutes here quoted, and it ſhall evidently appeare, that no old oath can be altered, or new oath raiſed without an Act of Parliament, or any oath miniſtred by any that have not allowance by the Common law, or by an Act of Parliament.

Magna Cart. c. 6. Stanf. Pr. 17. F.N.B. 264. W. 1. 3 E. 1. c. 40. 18 E. 3 ubi ſup. 5 R. 2. cap. 12. 6 R. 2. ca. 12. 4 H. 4. ca. 18. 2 H. 5. ca. 7. 8 E. 4. cap. 2. 1 R. 3. cap. 6. & 15. 19 H. 7. ca. 14. 14 H. 8. c. 2. 23 H. 8. cap. 5. 32 H. 8. ca. 46. 2 E. 6. ca. 13. 17 El. cap. 12. Set 3 Iac. c. 4.

And to conclude this point, It was reſolved in Parliament holden in Anno 43 Eliz. that the Commiſſioners concerning Policies of aſſurances could not examine upon oath, becauſe they had no warrant either by the Common law, or by any Act of Parliament: and therefore it was enacted at that Parliament, that it ſhould be lawfull for the ſaid Commiſſioners to examine upon oath any witneſſe &c. At this Parliament I attended, being then Attorney generall. And oaths that have no warrant by law, are rather nova tormenta quam ſacramenta, and it is an high contempt to miniſter an oath without warrant of law, to be puniſhed by fine and impriſonment. And therefore Commiſſioners (that ſit by force of any Commiſſion that is not allowed by the Common law, nor warranted by authority of Parliament) that miniſter any oath whatſoever, are guilty of an high contempt, and for the ſame are to be fined and impriſoned: * For Commiſſions are legall, and are like the Kings Writs, and none are lawfull but ſuch as are allowed by the Common law, or warranted by ſome Act of Parliament: and therefore Commiſſions of new Inquiries, or of novell invention, are againſt law, and ought not to be put in execution.

43 Eliz. ca. 12.

* Commiſſions. Regiſt. 1, 2, 3. 115, 126. 88. 128. 138. 161. F.N.B. 110, 111. 2 E. 3. 16. Paſch. 44. E. 3.

Coram Rege Rot. 2. 24 E. 3. Com. Br. 3. 29 E. 3. 30, 31. 18 E. 3 ca. 1 & 4. 18 E. 3. Stat. 2. ca. 6. Rot. Parl. 18 E. 3. nu. 47. 28 E. 3. ca. 19. Rot. Parl. 50 E. 3. nu. 56. 61. 2 H. 4. nu. 22, opdme 4 H. 4. ca. 9. Rot. Parl. 9 H. 4. nu. 36. 42. Aſſ. p. 5. 12. 42. E. 3. ca. 3. Dier 1 Eliz. 106. Serogs caſe.

And albeit divers of the Kings Courts in England proceed not according to the courſe of the common law, yet are their proceedings allowed either by the Common law, or by ſome Act of Parliament.

Certain poor Chriſtians that had ſpoken againſt the worſhipping of Images were by the Biſhops ſworn to worſhip Images: * which oath was againſt the expreſſe law of God, and againſt the law of the Land, for that they had no warrant

Dorſ. clauſ. An. 19 R. 2. nu. 17. * Exod. 20. 4. Deut. 5. 8.

Pſalme 86. 11. 96. 7. 115. 4. Levit. 26. 1. &c. Eſay 44. 9. &c. Ieremy 10. 3. &c. Sapient. 13. 10. &c. Auguſt. Epiſt. 110. ad Ian. ca. 11. idem de fide & ſymbolo, ca. 7. idem in Pſal. 113. con. 2.

vant to minister the same. Let the children of the Church be called and instructed by the testimonies of the holy Scripture, that nothing made with hands may be worshiped. See the second part of the Institutes, Marlbridge cap. 14. & 19. concerning oathes, and specially out of Glanvile, concerning the Nobility of this Realme, and W. 1. ca. 38.

Gregor. lib. 9. Epist. 9.

¶ By any having authority.] For where the Court hath no authority to hold plea of the cause, but it is coram non judice, there perjury cannot be committed. For as Bracton saith, Sacramentum habet in se tres comites, Veritatem, Justitiam, & judicium; veritas habenda est in jurato; justitia & judicium in Judice. And all this is grounded upon the law of God, Jurabis vivit Dominus, in veritate & judicio, & in justitia.

Bracton lib. 4. fo. 186.

Ier. 4. 2.

¶ In any judiciall proceeding.] For though an Oath be given by him that hath lawfull authority, and the same is broken, yet if it be not in a judiciall proceeding, it is not perjury punishable either by the Common law, or by this Act, because they are generall and extrajudiciall, but serve for aggravation of the offence, as generall Oathes given to Officers or ministers of Justice, Citizens, Burgesses, or the like, or for the breach of the Oath of Fealty or Allegeance, &c. they shall not be charged in any Court judiciall, for the breach of them afterwards. As if an Officer commit extortion, he is in truth perjured, because it is against his generall Oath: and when he is charged with extortion, the breach of his Oath may serve for aggravation.

Trin. 13 Ia. Li. 11. f. 98. Bagges case.

If a man calleth another perjured man, he may have his action upon his case, because it must be intended contrary to his Oath in a judiciall proceeding: and so it is termed in our statute of 5 Eliz. but for calling him a forsworne man, no Action doth lye: because the forswearing may be extrajudiciall. If the defendant perjureth himselfe in his answer in the Chancery, Exchequer Chamber, &c. he is not punishable by this statute, for it extendeth but to witnesses, but he may be punished in the Star-chamber, &c.

¶ Who sweareth absolutely.] For the deposition must be direct and absolute, and not ut putat, nor sicut meminit, nor ut credit, &c.

Bracton lib. 4. fo. 289. Fleta lib. 5. ca. 21.

¶ And falsely.] Herein the law taketh a diversity between falshood in expresse words, and that is onely within this statute, and falshood in knowledge or mind, which may be punished though the words be true. For example: damages were awarded to the plaintife in the Star-chamber according to the value of his goods riotously taken away by the defendant: the plaintife caused two men to sweare the value of his goods, that never saw nor knew them; and though that which they sware was true, yet because they knew it not, it was a false oath in them, for the which both the procurer and the witnesses were sentenced in the Star-chamber.

Gurneis case in the Star-chamber Mic. 9. Jac.

Fleta ubi supra.

For (as Fleta saith) Ad rectum juramentum exiguntur tria, veritas, conscientia, & judicium: truth and conscience in the witnesse, and judgment in the Judge. And herewith agreeth Bracton, that a man may sweare the truth and yet be perjured. Dicunt quidam verum, & mentiuntur, & pejerant, eo quod contra mentem vadunt. Ut si Judeus juraverit Christum natum ex virgine, perjurium committit quia contra mentem vadit, quia non credit ita esse ut jurat.

Bracton lib. 4. fo. 289.

By the ancient law of England, in all Oathes, Equivocation is utterly condemned, for Britton saith, Serement est honest & leall quant la conscience demesne accord a chescun point a la bouche ne pluis, ne meins, & il ad discord, donqs est perillous. And this is grounded upon the law of God. Nunquid Deus indiget mendacio vestro, ut pro illo loquamini dolos, aut decipietur ut homo vestris fraudulentis? Perjuri sunt qui servatis verbis juramenti decipiunt aures eorum qui accipiunt. If equivocation should be permitted tending to the subversion of truth, it would shake the foundation of Justice.

Equivocation. Britton fo. 237. Iob 13. 7.

¶ In

¶ In a matter materiall to the iſſue, or cauſe in queſtion.] For if it be not materiall, then though it be falſe, yet it is no perjury, becauſe it concerneth not the point in ſuit, and therefore in effect it is extrajudiciall. Alſo this Act giveth remedy to the party grieved, and if the depoſition be not materiall, he cannot be grieved thereby. And Bracton ſaith, Si autem Sacramentum fatuum fuerit, licet falſum, tamen non committit perjurium. Bract. lib. 4. 188. Fleta lib. 5. ca. 22. accord.

¶ By their own act, &c.] This clauſe of the ſtatute, although it bee more generall then the clauſe of procurement, yet ſeeing the firſt clauſe concerning procurement, extended not to perjury upon an Indictment: this clauſe by conſtruction ſhall extend no further then the former. See Lib. Intr. Coke fo. 164. 165. 362. Flowers caſe, ubi ſupra.

¶ Or by the ſubornation of other.] Subornation is derived of Sub and orno, and ornare in one of his ſignifications is to prepare, ſo as ſubornare is as much to ſay, as to prepare ſecretly, or underhand. Eſt autem ſubornare quaſi ſubtus in aure ipſum male ornare, unde ſubornatio dicitur de falſi expreſſione; aut de veri ſuppreſſione. And here is to be noted, that in the judgment of the Parliament Plus peccat author quam actor; For the ſuborner forfeits 40. l. & he that is ſuborned but 20. li. Fleta ſaith, Si ſervus cogatur ſcienter à Domino perjurare, uterq; eſt perjurus; qui autem provocat eum ad jurandum quem ſcit falſum jurare, vel exigit, vel recipit juramentum, talis vincit homicidam, quia homicida ſolum corpus occidit, iſte vero animam ſuam & alterius: & peccat, qui alium audit falſum jurare, ſcit, & tacet. Fleta lib. 5. ca. 22.

In an Action of perjury brought upon this ſtatute, the plaintife counted, that the defendant falſo dixit & depoſuit, &c. and in what action, upon what iſſue, and in what Court, &c. and concluded, & ſic commiſit voluntarium & corruptum perjurium. And it was ruled by the whole Court, that the Court was vicious and inſufficient for two cauſes. Firſt, for that in this Act of 5 Eliz. as here it appeareth, there be two diſtinct clauſes, one if he be perjured of his own proper act; the other, if he be perjured by ſubornation, &c. and the plaintife ought to declare in certainety, within which of them the defendant is perjured. The ſecond cauſe was, where the Act ſaith [wilfully and corruptly commit any willfull perjury, &c.] and the words of the Count be, falſo dixit & depoſuit: and ſaith not, voluntarie & corrupte; and the ſaid clauſe, & ſic commiſit voluntarium & corruptum perjurium, ſatveth not the former inſufficiency, becauſe it is but a concluſion upon the former matter. Mic. 29. & 30. Eliz. coram rege.

And the like judgment was given in this Court, as to this latter point, Anno 27 Eliz. in the caſe of one Mellers of Lincolne ſhire. 27 Eliz. Mellers caſe.

¶ That as well the Judge and Judges of every ſuch of the ſaid Courts.] If the perjury be committed by any witneſſe depoſed in the Chancery, &c. and the party grieved commenceth his ſuit there upon this Act, the ſame and all the proceedings thereupon muſt be in Latin according to the courſe of the common law, and the defendant ſhall not be ſworn to his anſwer, nor examined upon interrogatories (unleſſe the Court of Chancery had before this Act uſed to examine perjuries, and to examine the defendant upon oath upon interrogatories before this Act, for then ſuch juriſdiction had been ſaved by a Proviſo in this Act) and when iſſue is joyned, it ſhall be tried in the Kings Bench, as by Law it ought, & ſic de ſimilibus. Dier 12 El. 288.

If a man be taken for a ſuſpect, and he is not indicted, nor is there any certaine cauſe to arraigne him, the Court may give him the Oath of Allegiance, viz. Que il ſerra foial & loyal, &c. Vide 45 E. 3. 17. b. ſimile devant cap. 7. De Conjuration, &c. in fine 22 E. 4. 36. 20 H. 6. 37. Attorney abjure. 25 E. 3. 42. b. cor. 131.

See more of Perjury & of Witneſſes in the fourth part of the Inſtitutes, Cap. Commiſſioners for examination of witneſſes. See 21 Jac. cap. 20. a good Act to prevent and reforme prophane ſwearing.

CAP. LXXV.

Of forging of Deeds, &c.

5 Eliz. cap. 14.

IF any perſon or perſons upon his or their own head or imagination, or by falſe conſpiracy or fraud with others, ſhall wittingly, ſubtilly, and falſely forge, or make, or ſubtilly cauſe, or wittingly aſſent to be forged or made any falſe Deed, Charter or Writing ſealed, Court Roll, or the will of any perſon or perſons, in writing; to the intent that the ſtate of freehold or inheritance of any perſon or perſons, of, in, or to any lands, tenements, or hereditaments, free-hold or coppy-hold, or the right, title, or intereſt of any perſon or perſons of, in, or to the ſame, or any of them, ſhall or may be moleſted, troubled, defeated, recovered, or charged, &c. Or ſhall pronounce, publiſh, or ſhew forth in evidence any ſuch falſe and forged Deed, Charter, Writing, Court-Roll, or Will, as true, knowing the ſame to be falſe and forged, as is aforeſaid, to the intent above remembred, and ſhall be thereof convicted, either upon action or actions of forger of falſe Deeds to be founded upon this Statute, at the ſuit of the party grieved, or otherwiſe according to the order and due courſe of the laws of this Realme, or upon bill, or information, to be exhibited into the Court of Star-chamber &c. ſhall pay to the party grieved his double coſts and damages, &c. And be it further enacted, that if any perſon or perſons, upon his or their owne head or imagination, or by falſe conſpiration or fraud had with any other, ſhall wittingly, ſubtilly, and falſely forge or make; or wittingly, ſubtilly, and falſely cauſe or aſſent to bee made or forged, any falſe Charter, Deed, or Writing, to the intent that any perſon, or perſons, ſhall or may have or claime any eſtate or intereſt for terme of yeers, of, in, or to any Mannors, lands, tenements, or hereditaments, not being coppy-hold; or any Annuity in fee-ſimple, fee-taile, or for term of life, lives, or yeeres, or ſhall make or forge as is aforeſaid, any Obligation or Bill Obligatory, Acquitance, Releaſe, or diſcharge of any debt, account, action, ſuit, demand, or other thing perſonall, or ſhall pronounce, &c. *ut ſupra*. That then he ſhall pay, &c.

And be it further enacted, that if any perſon or perſons being hereafter convicted or condemned of any of the offences aforeſaid, &c. ſhall after any ſuch his or their conviction or condemnation eſtſoons commit or perpetrate any of the ſaid offences in forme aforeſaid, that then every ſuch ſecond offence or offences ſhall bee adjudged felony, &c.

We have ſpoken of forgery or counterfeiting of the Great Seal of the Kings Coin, &c. which are declared by the Statute of 25 E. 3. to be High Treaſon: Now we are to treat of forgeries of Deeds, Charters, and writings ſealed, &c. in the caſe of Subjects. And firſt, after our accuſtomed manner how theſe offences were puniſhed of ancient time.

Mir. cap. 4. § Des paines. Et cap. 5. §. 1.

The Mirror ſaith, Aſcuns peches ſont punies p pde de poulce, come eſt de faulx notoires, &c. *peccans membrum punietur.* (Car pur fauxer de ſeale ne ſerr' judgement mortel.)

Britton

Britton ſaith, Judgment dēe treyne, & de ſuffer mort doit encount' ceux coure, q̄ p appeales de felony ſont atteints, q̄ ilz eyent le ſeale lour ſeigniour, qui mainpaſt ils ſont, ou q̄ homesp homage counterfait, ou autrement fauſe, &c. Et ſi tiels m anners des faits ſoient atteints a noſtre ſuit, ſi ſoient pur le ſeale fauſe juges a judgment de pillory, ou de perdre le oraile ſi le fait ſoit ſimple: & ſi le fait ſoit grand & leyde, ſicome touchant diſheriſon ou perpetuall domage, ſi ſoient juges à la mort. Britton fo. 16. a. & b.

Fleta ſaith, Crimen falſi dicitur, cum quis accuſatus fuerit vel appellatus, quod ſigillum Regis, vel domini ſui de cujus familia fuerat, falſaverit, & brevia inde conſignaverit; vel cartam aliquam vel literam ad exhæredationem domini &c. ſigillaverit; in quibus cauſis ſi quis convictus fuerit, detractari meruit & ſuſpendi. Et quod de hujuſmodi falſariis dicitur, de ſigilla adulterina Cartis & Literis apponentibus dicatur id idem. And in another place he ſaith, Eſt etiam atrox injuria quæ perpetuam inducit infamiam cum pœna pillorari vel tumbrelli, quæ quandoque fit per falſarios ſigillorum (dum tamen non regis nec domini ſui de cujus fuerit familia.) Fleta lib. 1. ca. 20. Fleta lib. 2. ca. 2.

We have the more willingly repeated theſe ancient puniſhments, to ſhew how in part, (viz. concerning the eares and Pillory) this Act for the firſt offence concurreth with the ancient puniſhment.

¶ Forge] To forge is metaphorically taken from the Smith, who beateth upon his Anvill, and forgeth what faſhion or ſhape he will: the offence (as it appeareth before) is called Crimen falſi, and the offender falſarius, and the Latin word to forge is falſare or fabricare. And this is properly taken when the Act is done in the name of another perſon.

The ſtatute of 1 H. 5. hath theſe words [forge of new any falſe deed.] And yet if A make a feoffement by deed to B, of certaine land, and after A maketh a feoffement by deed to C of the ſame land with an antedate before the feoffement to B, this was adjudged to be a forgery within that ſtatute, and by like reaſon within this ſtatute alſo: and the rather in reſpect of the words ſubſequent, [or make &c.] 26 H. 6. forger. 8. 27 H. 6. 3.

¶ Or make &c.] Theſe be larger words then to forge: for one may make a falſe writting within this Act, though it be not forged in the name of another, nor his ſeale nor hand counterfeited. As if A make a true deed of feoffement under his hand and ſeale of the Manner of Dale unto B, and B or ſome other raſe out D the firſt letter of Dale, and put in S, and then where the true Deed was of the Manor of Dale, now it is falſely altered and made the manor of Sale. This is a falſe writting under ſeale within the purview of this ſtatute. And ſo it is if a Rent Charge of one hundred pounds by the yeare be granted out of land in fee or for life, &c. & the grantee or any other raſe out of one, and in ſtead thereof writeth two; this is a falſe writing within the danger of this ſtatute.

¶ Or ſubtilly cauſe, or wittingly aſſent.] To cauſe, is to procure or counſell one to forge, &c. To Aſſent, is to give his aſſent or agreement afterwards to the procurement or counſell of another: To conſent, is to agree at the time of the procurement or counſell, and he in law is a procurer.

Deed, Charter, or Writing ſealed.] It is required that the Deed, Charter, or writing muſt be ſealed; that is, have ſome impreſſion upon the wax, for Sigillum eſt cera impreſſa, quia cera ſine impreſſione non eſt ſigillum; and no Deed, Charter, or Writing, can have the force of a Deed without a Seale. Paſch. 14 Eliz. Dier. 312. Iames Taverners caſe. In Camera ſtellata.

¶ Writing ſealed.] Theſe are large words: for the making of a falſe cuſtomary of a Manor in writing under ſeale, containing divers falſe cuſtomes tending to the diſherſion of the Lord of the Manor, and that the ſame had been allowed

allowed and permitted by the Lords of the Spannor, &c. which was also false, was resolved to be within these words, [a false writting sealed.]

¶ Court Roll, or the will of any person or persons in writing.] Here be two kinds of Instruments that need not be sealed, because they may take effect without any seale, for that they be no deeds; as Court rols concerning grants, surrenders, admittances, &c. of Copy or Customary lands: & the last will in writing. If any person which writeth the will of a sick man inserteth a clause in his last will, concerning the devise of any lands or tenements, which he had in fee-simple, falsly without any warrant, or direction of the Devisor: albeit he did not forge, or falsely make the whole will, yet is he punishable by this Statute, as it hath been often holden in the Star-chamber against the opinion reported by my Lord Dier.

Dier 12 El. f. 288. Sir Iames Marvyns case.

¶ To the intent that the state of freehold or inheritance, of or in any lands, tenements, or hereditaments, freehold or copyhold, shall or may be molested, troubled, defeated, recovered, or charged.] The great doubt upon this branch, and of the branch hereafter ensuing, was, for that it is not expressed by this Act, what estate, or interest should be mentioned to passe by the Deed, Charter, &c. whereby the estate of the freehold or inheritance should or might be molested; &c. or charged; whether if one did forge, &c. a deed, charter, &c. of an interest, or tearm of a hundred or a thousand years, &c. of lands, which are the freehold or inheritance of another; whereby the same shall or may be molested, &c. and the same question of a rent charge for yeares in the like case: and the doubt was the greater in respect of the clause hereafter insuing, which is, To the intent that any person or persons shall or may have or claim any estate or interest for tearm of yeers, of, in or to any mannors, &c. And it was resolved, that a lease or charge for yeeres of any lands being the freehold or inheritance of any person, was within this branch, for the clause is generall, not mentioning any estate or interest, &c. whereby the molestation should grow; and it was requisite it should extend to Leases or Charges for years, for otherwise mens estates of freehold or inheritance, &c. might be of little or no value: and accordingly it was resolved, Pasch. 38 Eliz. in the Star-chamber between the Lady Gresham plaintif, and Roger Booth Scrivener of London, Markham and others Defendants, for the forging of a grant of a rent charge, by deed bearing date anno 21 Eliz. for ninety nine yeers to the said Markham out of all Sir Thomas Greshams lands of inheritance, & for publication thereof; and sentence given upon the said branch accordingly against Roger Booth for publication of the same.

Pasch. 38 Eliz. in Camera Stellata: the Lady Greshams case.

And the said branch after insuing, is to be understood when the forgery, &c. is to the molestation of a Termor. As if A. be possessed of a lease of lands for years, and B. in his name doth forge an assignment to C. of his tearm, this is directly within the letter and meaning of this branch, and the rather in respect of those things that be joyned therewith under the same punishment.

¶ Or the right, title, or interest of any person, or persons in or to the same.] These words were added, for that the statute of 1 H. 5. being to undoe and trouble the possession and title (in the Conjunctive) of the said Kings liege people: doubt was made whether a forgery to bar one that had but a bare right or title, and no possession, was within that statute: and therefore this clause of 5 Eliz. added this clause in the Disjunctive, as here it appeareth. But now by a speciall branch of this Act the statute of 1 H. 5. cap. 3. being doubtfully penned, is repealed by a clause in this Act, and greater punishment inflicted by this statute.

Vide 4 H. 6. 25. 8 H. 6. 33. 20 H. 6. 33 H. 6. 23. 15 E. 4. 24. Pl. com. 88.

Of

¶ Or ſhall pronounce, publiſh, or ſhew forth in evidence any ſuch falſe and forged deed, &c. as true, knowing the ſame to be forged] Here be two things to be explained: firſt, what it is to pronounce, or publiſh as true. Secondly, what knowledg is ſufficient.

To pronounce or publiſh is, when one by words or writing pronounceth or publiſheth the deed, &c. to any other as true.

¶ Knowing the ſame to be forged.] This knowledge may come by two meanes, either of his owne knowledge, or by the relation of another. As if A. tellieth B. that ſuch a deed is falſe and forged, and yet B. will after pronounce or publiſh this to be a true deed, and afterwards it falleth out by proof that the relation of A. was true, and the deed in truth was forged, B. is in the danger of this ſtatute: and ſo was it reſolved in the above ſaid caſe of the Lady Greſham, againſt Roger Booth, &c. ubi ſupra, and ſentence given accordingly.

¶ And that the Defendant ſhall ſuffer upon the Pillory the corporall penance, &c.] And there is a clauſe that the Plaintif ſhould not releaſe nor diſcontinue the puniſhment, &c. but onely coſts and damages: and yet it was reſolved that the Queen might pardon the corporall puniſhment, which trencheth to common example. Dier 15 Eliz. Taverners caſe, Ubi ſupra.

And upon the ſtatute of W. 2. ca. 25. which giveth two yeers impriſonment in a raviſhment of ward, the King may pardon the ſaid corporall puniſhment of impriſonment. And the puniſhment of finding of ſurety, and forjuring the Realme, &c. upon the ſtatute of W. 2. cap. 28. De malefactoribus in parcis, may be pardoned by the King. Paſch. 34 E. 3. Coram Rege, Rot. 30. Cane' the caſe of Godf. tha Waldiſh. Dier 7 El. 231.

¶ Any falſe charter or deed] This muſt be intended to be ſealed according to the former clauſe, though it be not here ſpecified.

¶ To the intent that any perſon or perſons ſhall or may have or claim any eſtate or intereſt for terme of yeers.] This branch hath been explained before in the former part of this ſtatute. Pl. com. 80. b.

¶ Not being copyhold.] This needeth no explication.

¶ Or annuity.] This is evident.

¶ Any obligation, or bill obligatory.] Here muſt be intended to be ſealed: If a man forge a ſtatute ſtaple, or a Recognisance in the nature of a ſtatute ſtaple, that is, acknowledge them, or either of them in the name of another; theſe are obligations within this Act, for each of them hath the ſeale of the party. But otherwiſe it is of a ſtatute Marchant, or of a Recognisance, becauſe they have not the ſeale of the Conuſor. F. N. B. 96. b. c. & 10. a. 15 H. 7. 15. &c.

¶ Or writing.] This extends to a teſtament in writing, whereby a terme for yeers or goods and chattels be deviſed, and the former branch extendeth to a will in writing concerning freehold and inheritance. Dier 13 El. 302. b.

¶ Acquitance, releaſe or diſcharge.] Lodowick Grevil Eſquire was bound by Recognisance of two hundred pounds, to Rowland Hinde of the inner Temple, for payment of one hundred pound. Hinde wrote a letter to Grevil, and writ his name in the loweſt part of the letter, (as many uſe when they write to men of great calling) Grevil cauſed the letter to be cut off, and a generall releaſe in few words to be written above Hindes name, and took off Hindes ſeal, and ſixed it under the releaſe: ſo there was Hindes hand and ſeale to this releaſe Mich. 13. & 14 El. in Camera Stellata inter Hinde & Grevill.

releaſe, Hinde being not paid his hundred pound, brought a Scire fac' upon the recogniſance, whereunto Grevill pleaded this releaſe, Hinde pleaded non eſt factum, and tryed his deed, whereupon judgment was given againſt him, whereby Hinde was barred of his debt. For this forged releaſe Grevill was ſentenced in the Star-chamber upon this ſtatute.

¶ Shall pay to the party grieved, his double damages.] Upon theſe words in the caſe aforeſaid, betweene Hinde and Grevill, the queſtion was, whether Hinde ſhould have double damages in reſpect of the penalty, viz. the two hundred pound, or of the hundred pound, the due debt appearing in the condition of the recogniſance. And it was reſolved, that damages ſhould be aſſeſſed by the Court to double the penalty, for the penalty ſhould be recovered by law if the forged releaſe had not been: and this was reported by the Lord Dier, and imprinted, and ſince omitted out of the print.

¶ Being hereafter convicted or condemned of any of the offences aforeſaid, ſhall, &c. eftſoons commit, &c. any of the ſaid offences.] Here be foure kind of offences; the firſt concerning moleſtation, &c. of freehold & inheritance. Secondly, the publication of the ſame knowing, &c. The third concerning a terme for yeers, annuities, and demands perſonals. Fourthly, the publication thereof.

Paſch. 7. Ja. Inter Sir Will. Reade Pl. & Rogerum Booth & alios Def. in Camera Stellata.

Now the queſtion upon this branch concerning felony, was, that whereas the ſaid Roger Booth was convicted in the Star-chamber for the publiſhing of the forged grant by deed of a rent charge of a hundred pound per annum, as is aforeſaid; afterwards the ſaid Roger and others were charged in the Star-chamber with the forging of a deed of feoffement, in the name of Sir Thomas Greſham bearing date 20 Eliz. but forged long after: whether this ſecond forgery was felony, or no, within this branch: and the doubt did riſe upon the ſaid words [eftſoones] commit any of the ſaid offences. And it was objected, that by reaſon of this word [eftſoons] iterum, the ſecond offence muſt be of the ſame nature as the firſt offence was, as the firſt offence being for publication of a forged deed, &c. the ſecond offence muſt be for the publication of another forged deed, &c. upon that branch whereupon the firſt offence was grounded, or elſe it was ſaid, it was not iterum, which word was in ſignification quaſi iter unum, that is to ſay, per idem iter, and it is ſo taken for the ſecond time. Primo quidem decipi, incommodum eſt, iterum ſtultum, tertio turpe: which doubt was referred to the conſiderations of the two Chief Juſtices, and Chief Baron, who upon hearing of Councell learned of both ſides, and upon conference, and conſideration had of this Act, reſolved, that the ſecond offence was felony within the words, and meaning of this Act, for the words be expreſſe, being condemned of any of the ſaid offences, eftſoons commit any of the ſaid offences: ſo as by reaſon of theſe words, any of the ſaid offences, this word [eftſoons] is well ſatisfied, if he commit the ſecond time any of them: and ſo theſe words any of the ſaid offences extend to any of the ſaid four offences before mentioned. And it was alſo reſolved by them, that by reaſon of this word [eftſoons] the ſecond forgery, &c. muſt be committed after the firſt conviction, or elſe it is no felony.

Cicero Lib. 1. de Invent.

¶ Provided alwaies, &c. that if any perſon, &c. hath of his own head, &c. forged or made, &c. Or if any perſon, &c. hath heretofore publiſhed or ſhewed forth any falſe deed, &c.] Hanford before this ſtatute forged a leaſe for yeers of the land of the Lord Williams of Tame, which leaſe after by Weynman (which had married one of the daughters and heirs of the ſaid Lord Williams) was impeached, but not as forged, and by compoſition for two hundred pound was redeemed by Weynman and the leaſe was cancelled. And after Weynman perceiving the leaſe to be forged, ſued Hanford in the Chancery to have reſtitution of the two hundred pound,

Trin. 11. El. Dier in a manuſcript not printed.

and

and there Hanford after this ſtatute of 5 Eliz. maintained the leaſe as good and true: whereupon Weynman ſued Hanford in the Star-chamber; where by the opinion of the Chief Juſtices it was holden, that it was not within this ſtatute, becauſe that the deed was cancelled, and Hanford made no title to the intereſt of the tearm.

¶ Provided alwaies, &c. that this Act, or any thing therein contained, ſhall not extend to any perſon that ſhall plead or ſhew forth any Deed or Writing exemplifyed under the Great ſeale of England, or under the ſeal of any other authentique Court of this Realm, nor ſhall extend to any Judge or Juſtice, or other perſon that ſhall cauſe any ſeal of any Court to be ſet to ſuch Deed, Charter, or Writing enrolled, not knowing the ſame to be falſe or forged.

This muſt be intended of a Deed or Writting, which by law may be exemplifyed: for the knowledg whereof we will report a reſolution of the whole Court of the Common Pleas. The iſſue between the ſaid parties to be tryed at the Bar was, whether the laſt Abbot of Abbingdon, and all his Predeceſſors, &c. held certain lands in the parish of Saint Ellens, &c. diſcharged of the payment of Tithes: and the Plaintif offered to ſhew in evidence to prove the ſaid land to be diſcharged of payment of Tithes, a Vidimus or Innoteſcimus under the Great Seal in theſe words: Vidimus quendam antiquum librum in pergameno intitulatum Volumen de copiis munimentorum ſeu diverſorum geſtorum, & actorum monaſterii de Abbingdon. In which book was a copy of a Bull of the Pope, for the diſcharge of the ſaid land for payment of tithes, which was but part (amongſt other things) of the ſaid book. And by the opinion of the whole Court, hearing of the counſell of both parties, it was reſolved that the ſaid exemplification ought not to bee given in evidence to the Jury for theſe cauſes: Firſt, becauſe that which was exemplifyed, was not of record, for neither Deed, Charter, or other Writing, either ſealed, or without ſeal, ought to be exemplifyed under the Great Seal, or any other Seal in Court of Record: for ſeals of Courts of Record ought not to exemplify any thing but that which is of record, becauſe Records be publike, whereunto every ſubject may have recourſe to confer the exemplification with the Record it ſelfe; and Records be in the cuſtody of ſworn Officers, and therefore no inconvenience can follow upon the exemplification of them. But a Deed, Charter, and other Writings are private, and remaine in the cuſtody of the party, and may bee raſed, interlined, or corrupted in points materiall, and if they ſhould be exemplifyed, the raſure, interlineation, and corruption ſhall not appeare therein. Alſo the Deed, Charter, or other writting may be forged; and if they ſhould be exemplifyed, then the exemplification might ever bee ſhewed in evidence, and not the Deed, &c. it ſelfe, and ſo the forgery, and falſity ſhould never upon the view of the Deed, or of the ſeal, or other things riſing upon the view, bee diſcovered. Moreover if a forged Deed ſhould be exemplifyed, then the effect of this ſtatute concerning publication, ſhould be taken away; for then the forged deed, &c. it ſelfe might never be publiſhed, or given in evidence, but the exemplification, and ſo this ſtatute in that point deluded: and therefore where this ſtatute or any other ſtatute or book ſpeaks of an Exemplification, Vidimus or Innoteſcimus of a Deed, &c. it muſt bee intended of a Deed inrolled, viz. the Exemplification, Vidimus or Innoteſcimus of the inrolment thereof, which is of record. It was further reſolved that no Record, or inrolment of any Record, may be exemplifyed under the Great Seale, but of a Record of the Court of Chancery, or other Record duly removed thither by Certiorari, &c. Furthermore it was reſolved that no exemplification ought to be of any part of a Letters Patents, or of any other Record, or of the inrolment thereof, but the whole Record of the inrolment thereof ought to be exemplifyed, ſo that the whole truth may appeare, and not of ſuch part, as makes for the one party,

Mich. 10. Jacobi Regis in communi banco in a prohibition between Tho. Read. Pl. and Avis Hide, and Rich. Hide Defendants.

Mich. 29. & 30. Eliz. lib. 5. fo. 54. in Pages caſe.

and nothing that make againſt him, or that manifeſteth the truth. Laſtly, in the caſe at the Barre, the ſaid Booke was intituled, Volumen de copiis munimentorum, & diverſorum geſtorum. So as ſeeing the Bull it ſelfe (being no matter of Record) could not be exemplified; à fortiori, no exemplification could be had of the copie of the ſame. And if Bulls, &c. might be exemplified, then there might be an evaſion to make the ſtatute of 28 H.8.cap. 16. of ſmall force, which prohibiteth pleading, or alledging of Bulls, &c. under paine of a Præmunire, as by that Act appeareth.

28 H.8.cap.16.
1 & 2 Ph.& Mar. cap.8.
1 Eliz.cap.1.

CAP. LXXVI.

Of Libels and Libellers.

WHat a Libell is, how many kinds of Libels there be, who are to be puniſhed for the ſame, and in what manner, you may read in my Reports, viz. Lib.5. fo.124, 125. Lib.9.fo. 59. To theſe you may adde two notable Records. By the one it appeareth, that Adam de Ravenſworth was indicted in the Kings Bench for the making of a Libell in writing, in the French tongue, againſt Richard of Snowſhall, calling him therein, Roy de Raveners, &c. Whereupon he being arraigned, pleaded thereunto not guilty, and was found guilty, as by the Records appeareth. So as a Libeller, or a publiſher of a Libell committeth a publick offence, and may be indicted therefore at the Common Law.

Mic.10 E.3. coram Rege. Rot.92. Eborum.

John de Northampton an Attorney of the Kings Bench, wrote a Letter to John Ferrers one of the Kings Councell, that neither Sir William Scot Chiefe Juſtice, nor his fellowes the Kings Juſtices, nor their Clerks, any great thing would do by the commandement of our Lord the King, nor of Queen Philip, in that place, more then of any other of the Realme; which ſaid John being called, confeſſed the ſaid Letter by him to be written with his own proper hand. Judicium Curiæ. Et quia prædictus Johannes cognovit dictam literam per ſe ſcriptam Roberto de Ferrers, qui eſt de concilio Regis, quæ litera continet in ſe nullam veritatẽ: prætextu cujus Dominus Rex erga Curiam & Juſticiarios ſuos hic in caſu habere poſſet indignationem, quod eſſet in ſcandalum Juſtic' & Curiæ. Ideo dictus Johannes committitur Mareſc' & poſtea invenit 6 manucaptores pro bono geſtu.

Mic.18 E.3. coram Rege.Rot. 151. Libellum.

CAP.

CAP. LXXVII.

Of Champerty, Imbracery, Maintenance, &c.

SEE the first part of the Instit. Sect. 701. Verb. Maintenance. And the second part of the Institutes, W. 1. cap. 8. 31. & W. 2. cap. 49. & the exposition upon the same. See also the statute of 32 H. 8. cap. 9. in the first part of the Institutes, *ubi supra*. Rot. Parl. 17 R. 2. nu. 10. Iohn de Wmsors case. And the fourth part of the Institutes, cap. Chancery. Whereunto you may adde, that where by the statute of 6 H. 6. cap. 2. it is recited, that divers in times past have beene disherited, because that in speciall Assises the Tenant and Defendant might not have knowledg nor copy of the pannell of them that be impannelled to passe in the said Assises, to informe them of their right and title before the day of the Session that the Assises shall be demanded; which is a rehearsall of the Common law, but so to be understood, that both parties plaintiffe and tenant, &c. be present, when such information is given, and consenting thereunto: otherwise, if one of them informeth in the absence of another, it is unlawfull, and a good cause of challenge of such of the Jury as shall be so on the one part informed: for every Jury must be indifferent, as he stand unsworn.

CAP. LXXVII.

Of Barretry.

SEE the first part of the Institutes, Sect. 701. Verb. Barretors. See the statute of Ragman temps E. 1. whereby the Commission of Trailebaston is raised. It is thus provided. Et pur ceo q̃ en tiels maners de quereles doit le court le roy ẽ favourable, voet le roy, & enjoint' les Iustices q̃ nul enquerelant, ne respoignant ne soit surprise nencheson per Hockettours, ou Barrettours pou que le veritie ne soit ensue. Ver. Mag. Cart. cap. 28. 2 part.

Hockettors or Hockquetours is an ancient French word for a knight of the Post, (worthy to be knit to a post) a decayed man, a basket-carrier.

For Barrettors, see the first part of the Institutes, *ubi supra*.

CAP. LXXIX.

Of Riots, Routs, Unlawfull Aſſemblies, Forces, &c.

RIotum commeth of the French word, Rioter. *i.* Rixari: and in the Common law ſignifieth, when three or more do any unlawfull act, as to beat any man, or to hunt in his Park, Chaſe, or Warren, or to enter or take poſſeſſion of another mans land, or to cut or deſtroy his corne, graſſe, or other profit, &c.

* Latine Turba. *-comes eſt diſcordia vulgi; Namq; à turbando nomen ſibi turba recepit.* Lambint. Leg. Inæ ca. 13, 14, 15. Vide Alvered. cap. 26.

* Routa is derived of the French word Rout, and properly in law ſignifieth, when three or more do any unlawfull act for their own, or the common quarrell, &c. As when Commoners break down Hedges, or Pales, or caſt down Ditches, or Inhabitants for a way claimed by them, or the like.

An unlawfull aſſembly is when three or more aſſemble themſelves together to commit a Riot or Rout, and do it not. Prædones autem nominamus uſq; numerum ſeptem virorum; deinde (quouſq; numerus 35 coaluerit) * Turmam (Saxonicè *hloth*) dicimus; numerus ſi excreverit, exercitum vocamus, *hlothbota*, to be quit of unlawfull aſſemblies.

* Turma quaſi tordena.

One may commit a Force. But of this, that I may not unprofitably repeat, you may read at large Fitzherbert, and thoſe others that have written of this Argument.

Regula. Intereſt regi habere ſubditos pacatos. Vis legibus eſt inimica. See Lib. 5. fo. 91. & 115. Lib. 11. fo. 82. See the firſt part of the Inſtitutes, Sect. 431. 440. Cuſtum. de Norm. cap. 52. fo. 66, 67.

CAP. LXXX.

Of Quarrelling, Chiding, or Brawling by words in Church or Church-yard.

5 E. 6. cap. 4. THe offender being a Lay-man, is to be ſuſpended by the Ordinary ab ingreſſu Eccleſiæ, and being a Clerk, from the miniſtration of his Office, ſo long as the Ordinary thinks meet according to the fault.

CAP. LXXXI.

Of Smiting, or laying violent hands upon another in Church or Churchyard.

THe offender ſhall be deemed ipſo facto excommunicate, and excluded from the company of Chriſts congregation.

5 E.6. ubi ſupra. V. Lib. 6. fo. 19. b. Grenescaſe. ſim.

CAP. LXXXII.

Of malicious ſtriking with any weapon, or drawing of any weapon in Church or Churchyard, to the intent to ſtrike another, &c.

THe offender being convict by the oath of twelve men, or by his own confeſſion, * or by two lawfull witneſſes, before Juſtices of Aſſiſe, Juſtices of Oier and Terminer, or Juſtices of Peace in their Seſſions, ſhall loſe one of his eares: and if he hath no eares, to be marked in the cheek with a hot Iron with the Letter F, and ipſo facto be excommunicate.

5 E.6. ubi ſup.
* Note the diſjunctive.
Int. leg. Inæ. ca. 6. Qui in templo pugnaverit 120 ſolidis noxiam facito.
Dier 23 Eliz. 177 Caſe ultim.

CAP. LXXXIII.

For ſtriking, &c. in any of the Kings Courts of Juſtice: and for ſtriking, &c. in any of the Kings Houſes, &c.

SEE before in the Sixty fifth Chapter of Piſcipſion, that is, Crimen commiſſionis.

CAP.

CAP. LXXXIV.

Againſt Fugitives, or ſuch as depart out of the Realme without licenſe, and ſuch as are beyond Sea, and return not upon command.

Ovidius. *Omne ſolum forti patria eſt, ut piſcibus æquor,*
Et volucri, vacuo quicquid in orbe patet.

IT is firſt to be ſeene of Acts in Parliament publiſhed in print, which of them are abrogated and repealed, and which of them ſtand in force. The ſtatute of 5 R. 2. cap. 2. is repealed by the ſtatute of 4 Iac. cap. 1. And the ſtatutes of 13 Eliz. cap. 3. & 14. Eliz. cap. 6. are expired. The ſtatute of 12 R. 2. Such as paſſe the ſea, or ſend out of the Realme to prouide or purchaſe any benefice of holy Church, with cure or without cure, are in danger of a Premunire. No perſon reſiant within any of the Kings Dominions, ſhall depart out of any of thoſe Dominions, to any Viſitation, Congregation, or Aſſembly for Religion.

12 R. 2. c. 15.

25 H. 8. cap. 19. & 1 Eliz. c. 1. reuiue.

Anno 1 Iac. cap. 4. and 3 Iac. cap. 5. Againſt going or ſending of children to any Seminary beyond Sea, and againſt the departure out of the Realm (without licenſe) of any children not being Souldiers, Mariners, Merchants, or other Apprentiſes, or Factors, for any cauſe whatſoever. And anno 3. Ia. ca. 4. againſt impoſing felony upon any ſubject that ſhall depart this Realme, to ſerue any Prince, State, or Potentate: or ſhall paſſe ouer the Seas, and there ſhall voluntarily ſerue any ſuch forraine Prince, State, or Potentate; not having before his or their going or paſſing, taken the Oath mentioned in that Act. And likewiſe impoſing felony upon any Gentleman or perſon of higher degree, or any perſon which hath borne, or ſhall beare any office, or place of Captaine, Lieutenant, or any other place, charge, or office in Campe, Army, or Company of ſouldiers, or Conductor of Souldiers, that ſhall goe or paſſe voluntarily out of this Realme, to ſerue any ſuch forain Prince, State, or Potentate, or ſhall voluntarily ſerue any ſuch forraine Prince, State, or Potentate, before he be bound by Obligation with two ſureties, as in that Act is preſcribed. But it is prouided that upon the attainder of any ſuch felony, no forfeiture of dower or corruption of blood ſhall enſue. Reade ouer theſe ſtatutes, for they are ſo plainely penned, as they need no expoſition.

1 Iac. cap. 4. 3 Iac. cap. 5.

Nert unto this, two things fall into conſideration, Firſt, what Acts of Parliament not publiſhed in print in our Bookes of Statutes do prohibit men to paſſe the Seas without licenſe. And ſecondly, what may be done therein by the Common law of England.

At the Parliament holden at Clarendon, Anno 10 H. 2. called the Aſſiſe of Clarendon, facta eſt recognitio cujuſdam partis conſuetudinum & libertatum anteceſſorũ Regis, & ca. 4. ſic recognitũ eſt. Archiepiſcopis, Epiſcopis, & perſonis regni non licet exire regnum abſque licentia Domini Regis, & ſi exierint, ſi Regi placuerit, ſecurũ eum facient, quòd nec in eundo nec in redeundo, nec morã faciendo perquirent malum ſeu damnum Domino Regi vel regno.

This appeareth in it ſelfe to be but a recognition, or declaration of the Common law: and this is manifeſtly proued by the Writ in the Regiſter at the Common law, purſuing in effect the very words of the ſaid Act of 10 H. 2. Breve de ſecuritate inuenienda, quod ſe non divertat ad partes exteras ſine licentia Regis,

Regiſt. fo. 89. 90. F. N. B. 85.

And

And hereupon there ariſeth a diverſity between one of the Clergie, and one of the Laity: for a man of the Church may be compelled to put in ſurety, that he ſhall not depart the Realme without the Kings licenſe, nor ſhall there attempt any thing in contempt or prejudice of the King or of his people. And this Writ is directed to the Sheriffe, and ſaith, Quia datum eſt nobis intelligi, quòd A. B. Clericus verſus partes exteras ad quam plura nobis & quam pluribus de populo noſtro præjudicialia & damnoſa ibid. proſequend', &c. Whereby it appeareth, that this Writ lyeth only in the caſe of an Eccleſiaſticall perſon, or a man of the Church, and that for three reaſons. Firſt, for that they had the cure of ſoules, and therefore ought to be reſident. Secondly, for that they, maintaining forraine authority, impugned many of the Kings laws, to the great prejudice of the Laity. Thirdly, they had no temporall lands, therefore they found ſureties.

Vide ſimile Regiſt.61,&c. Ad jura Regia. Regiſt.fo.193. De licentia tranſfretandi pro religioſis.

There is another Writ in the [a] Regiſter, that is to be directed to the party himſelf, viz. either to the Clerk, or to the Layman, wherein the King reciting, Quod datum eſt nobis intelligi, quod tu verſ. partes exteras abſque licentia noſtra clam deſtinas te divertere, & [b] quam plurima nobis & coronæ noſtræ præjudicialia ibid. proſequi intendas, &c. ſub periculo quod incumbit prohibemus, ne verſ. partes exteras abſque licentia noſtra ſpeciali aliqualiter te divertas, nec quicquam ibid. proſequi, &c. And upon this Writ the party is not to finde any ſurety, for there is no word of ſurety in this Writ. And if the [c] ſubject cannot be found, the King may make a Proclamation under the Great Seale, to the effect of the Writ laſt mentioned.

a Regiſt.89,90. F.N.B.fo.85.

b So as neither this Writ, nor a Proclamation in nature of this Writ ought to be granted, but where the party intends to depart the Realme for theſe ends.

c F.N.B.fo. 85.b. Vide Dier 1 Eliz. 165.b.

Now let us peruſe ſuch authorities as we finde in Records or Books of Law in ſerie temporis, taking ſome few examples for many that might be cited.

[d] Willielmus Marmion Clericus profectus eſt ad Regem Franciæ ſine licentia Domini Regis, & propterea finem fecit, &c. Note the going over without any prohibition precedent unlawfull.

d Rot. Finium 6 H.3. Et Rot.clauſ. 7 H.3.m.5.

[e] Nul grand Seignior ou Chivalier de noſtra Realm ne doit prender chemin (daler hors de Realm) ſans noſtre conge, car iſſint purroit le Realm remain diſgarne de fort gẽs. And [f] the Nobles & Peers of the Realm are of the Kings great Councel.

e Britton temps E.1.fo.281,283. Vide le ſtatut de 5 R.2. ca.2. Seigniors except out of that ſtatute.

f See the firſt part of the Inſtit. Sect.164.f. 110.a. 27 Auguſt 5 H.4. De ſon grand councell.

By this it appeareth, that theſe are prohibited to goe beyond ſea without licenſe: but others of the inferiour Laity may goe without licenſe, if they travell not to the abovelaid prohibited ends. But [g] thoſe of the Laity and men of the Church alſo being beyond ſea, may be commanded by the Kings Writ, either under the Great Seale, or Privie Seale, in fide & ligeantia, &c. to returne into the Kingdome (though he be not there to any of the abovelaid prohibited ends;) and if he returne not, for his contempt his lands and goods ſhall be ſeiſed, quouſque, &c. [h] Commandement was given to an Eccleſiaſticall perſon reſiding at Rome to returne into England.

g An.19 E.2.in Scac. 2 & 3 Ph.& Mar. Dier 128.pl.61. Will.de Britaine Countee de Richmonds caſe.

[i] Quamplurimæ literæ Domini Regis miſſæ Romæ, ad revocand' diverſos Clericos ibid. commorantes, qui quamplurima attemptarunt in dedecus Regni, præcipient' etiam, quòd redeant ad feſtum eis appunctuatum: & pro eo quòd non venerunt, præceptum fuit vicecomiti quod eos capiat. Et Rogerus de Holme Præbendarius, in Eccleſia Sancti Pauli London captus per Vic' London, & arenatus, examinatus, & convictus mittitur priſonæ Turris London ibid. moraturus, &c.

h Rot.clauſ. 4 E.3.m.38.

[k] Rex proclamari fecit in omnibus comitatibus Angliæ, quòd ne quis comes, baro, miles, religioſus, ſagittarius, aut operarius, &c. extra regnum ſe transferat, ſub pœna areſtationis, & incarcerationis.

i Hil.24 E.3.coram Rege, Rot.13.

k Dorſ.clauſ. 25 E 3.m.18.

Herein it is to be obſerved, that ſeeing by law, no Earle, Baron, or Knight, (as Britton ſaith) nor religious, &c. ought to goe out of the Realme, a generall Proclamation declarative will ſerve to aggravate their offence: but otherwiſe it is of thoſe, that are not prohibited by law, they muſt have ſuch a particular Writ or Proclamation as is abovelaid.

[l] Sir Matthew Gourny Knight was prohibited by the Kings Writ to depart the Realm, and to ſerve in wars expreſſly inhibited by the King; which notwithſtanding he did. Now the Record ſaith, Quia Matthæus Gourny miles contra defenſionem Regis transfretavit, & ſe guerris ſibi per regem inhibitis immiſcuit, tam in corpore, quam in bonis [m] forisfecit Regi manerium de Corimallet ſimul cũ una Carucat' terræ, &c.

l Mic.39 E.3. coram Rege. Rot.97.Somerſ. Rot.Vaſc.10 E. 3. m.29.

m By ſeiſure and imprisonment.

Rex

[a] Rex licentiam dedit Abbati de E. quòd proficiſci poſſit ultra mare ad viſitandum caput Sancti Iohannis Baptiſtæ Ambiani, corpora trium regum Coloniæ, feretrum Sancti Franciſci in & Sanctum Iacobum in Galicia, ita quòd non proſequetur, aut procurabit quicquam in præjudicium regis, aut * legum ſuarum, ſicut idem Abbas in præſentia Cancellarii regis per juramentum promiſit.

[a] Rot. Pat. 40 E. pt 1. m. 40. Mich. 41. E. 3. Coram rege Rot. 34. Priorissa Sancti Barth. & de novo Caſtro quod mare non tranſibit, &c.

* Nota (legum ſuarum) ut ſupra.

Note that Eccleſiaſticall perſons could not goe beyond ſea on Pilgrimage without licence, nor doe any thing in prejudice of the King, or his lawes.

[b] **And it is to be obſerved that the King may grant licence to travell beyond the ſeas, either under the Great Seale, Priuy Seale, or Priuy Signet, but he cannot recall one that is beyond ſea, but by the Great Seale, or Priuy Seal.**

[b] F. N. B. 85. f.

But for avoiding of tediouſneſſe, and heaping many to one end, let us deſcend to later times.

[c] **The Letters under the Great Seal, or Priuy Seale to recall any from beyond ſea, ought to be ſerved by ſome** [d] **meſſenger, who upon his oath is to make a certificat thereof in the Chancery, and from thence a Mittimus to bee ſent into the Exchequer, and thereupon a Commiſſion to be granted to ſeiſe the lands and goods of the Delinquent.**

[c] Dier Hil. 2 Eliz. 176. the caſe of Barteu and the Dutches of Suffolk.

[d] See 10 H. 4. 5. Englefields caſe. Lib. 7. fo. 11. See the 1. part of the Inſtitutes Sect. 102.

[c] Mich. 12. & 13. Eliz. **It was reſolved by all the Juſtices (except two) that a Merchant of London departing the Realm, to the intent to live freely from the penalty of the law, and out of his due obedience to the Queene, and not for any Merchandiſe, that it was no contempt to the Queen, for Merchants were excepted out of the ſaid ſtatute of** 5 R. 2. cap. 2. **and by the Common law Merchants might paſſe the ſea without licence, though it were not to merchandize.**

[e] Mich. 12. & 13 El. Dier f. 296. & Paſc. 23 Eliz. fo. 375. 5.

It is holden, and ſo it hath been reſolved, that divided Kingdomes under ſeverall Kings in League one with another are ſanctuaries for ſervants or ſubjects flying for ſafety from one Kingdome to another, and upon demand made by them, are not by the laws and liberties of Kingdomes to be delivered: and this (ſome hold) is grounded upon the law in Deuteronomy. Non trades ſervum domino ſuo, qui ad te confugerit.

Deut. c. 23. v. 15.

When Queene Elizabeths **Ambaſſadour lieger in France, anno 34. of her reign, demanded of the French King** Morgan **and others of her ſubjects, that had committed treaſon againſt her; the anſwer of the French King to the Queens Ambaſſadour is truly related in theſe words.** Si quid in Gallia machinarentur, regem ex jure in illos animadverſurum; ſin in Anglia quid machinati fuerint, regem non poſſe de eiſdem cognoſcere, et ex jure agere. Omnia regna profugis eſſe libera, regum intereſſe, ut ſui quiſque regni libertates tueatur. Immo Elizabetham non ita pridem in ſuum regnum Mountgomerium, principem Condæum, et alios è gente Gallica admiſiſſe, &c. **and ſo it reſted.**

Camden Eliz. pa. 35.

King H. 8. in the 28. year of his reign being in league with the French King, and in enmity with the Pope, who was in league with the French King, ſent Cardinall Pool **Ambaſſadour to the French King, of whom King H. 8. demanded the ſaid Cardinall being his ſubject, and attainted of treaſon, and to that end cauſed a treatiſe to be made (which I have ſeen) that ſo it ought to be done** jure gentium: ſed non prævaluit. **But** Ferdinando **King of Spain upon requeſt made by H. 7. to have** Edmund de la Pool **Earl of Suffolk attainted of High Treaſon by Parliament, anno 19 H. 7. at the firſt intending to obſerve the privilege and liberty of Kings, to protect ſuch as came to him for ſuccour, and protection, delivered him not, yet in the end upon the earneſt requeſt of H. 7. and promiſe that he would not put him to death, cauſed the ſaid Earle to bee delivered unto him, who kept him in priſon, and conſtruing his promiſe to bee perſonall to himſelf, commanded his ſon Henry after his decease to execute him, who in the firſt year of his reign upon cold blood performed the ſame.**

An. 21 H. 7. Rot. parl. 19 H. 7.

We could add more examples of this kind, but (to ſpeak once for all) having purpoſed

purpoſed to give ſome taſt of every thing pertinent, or incident to ſuch things, as we have undertaken to treat of, theſe ſhall ſuffice.

See the ſtatute of 3 Car. an Act to reſtrain the paſſing and ſending of any to be Popiſhly bred beyond the Seas. 3 Car. ca. 1.

* *Flemenesfrenne*, ſive *Flemenesfrenthe*, interpretatur, Catalla fugitivorum: * Mich. 10 H. 4. Coram Rege, Rot. 59. Hertford.

CAP. LXXXV.

Againſt Monopoliſts, Propounders, and Projectors.

IT appeareth [a] by the Preamble of this Act (as a judgement in Parliament) that all Grants of Monopolies are againſt the ancient and Fundamentall laws of this Kingdome, and therefore it is neceſſary to define what a Monopoly is.

[a] The ſtatute of 21 Jac. ca. 3. Rom. 1. 30. Inventores malorū.

[b] A Monopoly is an Inſtitution, or allowance by the King by his Grant, Commiſſion, or otherwiſe to any perſon or perſons bodies politique, or corporate, or for the ſole buying, ſelling, making, working, or uſing of any thing, whereby any perſon or perſons, bodies politique, or corporate, are ſought to be reſtrained of any freedome, or liberty that they had before, or hindred in their lawfull trade.

[b] A Monopoly deſcribed. See the Expoſition upon Magna Carta c. 29, & 30. in the ſecond pt of the Inſtit.

[c] For the word Monopoly, dicitur, ἀπὸ τοῦ μόνος, i. ſolo, καὶ πωλέω, i. vendere, quod eſt, cum unus ſolus aliquod genus mercaturæ univerſum vendit, ut ſolus vendat, pretium ad ſuum libitum ſtatuens: hereof you may read more at large in that caſe. And the law of the Realm in this point is grounded upon the law of God, which ſaith, Non accipies loco pignoris inferiorem & ſuperiorem molam, quia animam ſuam appoſuit tibi. Thou ſhalt not take the nether or upper milſtone to pledge, for he taketh a mans life to pledge: Whereby it appeareth that a mans trade is accounted his life, becauſe it maintaineth his life; and therefore the Monopoliſt that taketh away a mans trade, taketh away his life, and therefore is ſo much the more odious, becauſe he is vir ſanguinis. Againſt theſe Inventers and Propounders of evill things, the holy Ghoſt hath ſpoken, Inventores malorum, &c. digni ſunt morte.

[c] Trin. 44 Eliz. Lib. 11. f. 84, 85. le caſe de Monopolies. Deut. ca. 14. v. 6.

Rom. 1 30.

That Monopolies are againſt the ancient and Fundamentall lawes of the Realm (as it is declared by this Act) and that the Monopoliſt was in times paſt, and is much more now puniſhable, for obtaining and procuring of them, we will demonſtrate it by reaſon, and prove it by authority.

Commertium jure gentium commune eſſe debet, & non in Monopolium, & privatum paucorum quæſtum convertendum. Iniquum eſt aliis permittere, aliis inhibere mercaturam. 11 H. 7. 11.

Whatſoever offence is contrary to the ancient and Fundamentall lawes of the Realm, is puniſhable by law: but the uſe of a Monopoly is contrary to the ancient and Fundamentall Lawes of the Realm: therefore the uſe of a Monopoly is puniſhable by law.

W. 1. cap. 27.

That offence which is contrary to the ancient and Fundamentall lawes is malum in ſe. The Minor is proved by this declaration in Parliament.

Rot. Par. 50 E. 3. nu. 33.

The liberty that the ſubject hath to goe to any Clerk in the Kings Court cannot be reſtrained but by Parliament.

In 50 E. 3. John Peachie of London was ſeverely puniſhed for procuring a licence under the Great Seal, that he onely might ſell ſweet Wines in London.

See in the Preambles of 9 E. 3. cap. 1. 25 E. 3. cap. 2. 27 E. 3. & 28 E. 3. Stat. Stap. 2 R. 2. ca. 1. See the ſtatute of Magna Cart. ca. 3. 31 E. 3. cap. 10. 7 H. 4. ca. 9. and 12 H. 7. ca. 6. 1 & 2 Ph. & Mar. ca. 14. Rot. Parl. 1 R. 2. nu. 20. 4 R. 2. nu. 39. 5 R. 2. nu. 89. Fortéſcue cap. 35, 36. One of the Articles wherewith William de la Pool Duke of Suffolk was charged, was for procuring of divers liberties in derogation of the Common law, and hindrance of Juſtice: Note this is an offence puniſhable.

Rot. Parl. 28 H. 6. nu. 36.

Mich.2 & 3 El. Dier Manuſcript not printed.

King Philip and Queen Mary by their Letters Patents granted to the Maior, Bailifs & Burgeſſes of Southampton & their ſucceſſors, (for that King Philip firſt landed there) that no wines called Spaniſhes, brought into this Realm from the parts beyond the ſeas by any Leige man or Alien, ſhould be diſcharged or landed in any other place of the Realm, but onely at the ſaid town & port of Southampton, with a prohibition, that no perſon or perſons ſhall doe otherwiſe upon pain to pay treble cuſtome: And it was reſolved by all the Judges of England that this grant made in reſtraint of the landing of the ſame wines was againſt the laws and ſtatutes of this Realm, viz. Magna Carta, 29, 30. 9 E.3.cap.1. 14 E.3. 25 E.3. cap. 2. 27.& 28 E.3. Statute of the Staple. 2 R.2.cap.1. and others: and alſo that the aſſeſment of treble cuſtome was againſt law, and meerly void. And after at the Parliament holden in Anno 5 Eliz. the Patent, as to Aliens, was by a private Act confirmed by Parliament, and not for Engliſh.

Stat.de 5 Eliz.

Trin. 41 Eliz. Coram Rege, Rot.92. Int. Davenant & Hurdys in treſpaſſe. Trin.44 Eliz. in Lib.11. fo.84, 85. &c. Edward Darcies caſe. Hil.7.Jacobi in Lib.8.fo.121,122.&c. the caſe of the city of London.

The judgement in the ſaid caſe of Monopolies cited before, Trin. 44 Eliz. was the principall motive of the publiſhing of the Kings Book mentioned in the Preamble of this Act, and that Book was a great motive of obtaining the royall aſſent to this Act of Parliament, whereof we are now to ſpeak. This Act moved from the houſe of Commons: the Act is long and in print, and need not here to be rehearſed: yet will we peruſe and explain the words in the ſeverall branches of the Act.

¶ By his Grant, Commiſsion, or otherwiſe.] Theſe words [or otherwiſe] are of a large extent, and are well warranted by this Act, the words whereof extend not onely to all Proclamations, Inhibitions, Reſtraints and warrants of aſſiſtance of the King, but all Inhibitions, Reſtraints, and warrants of aſſiſtance of all or any of the Priby Councell or any other: and all other matters or things whatſoever either of the King, or of all or any of his Priby Councell to the inſtituting, erecting, ſtrengthening, furthering, or countenancing of the ſole buying, ſelling, &c. or any of them, are declared to be altogether contrary to the laws of this Realm. &c. ut in ſtatuto. This Act herein, and in the reſtore thereof, is forcibly and vehemently penned for the ſuppreſſion of all Monopolies: for Monopolies in times paſt were ever without law, but never without friends.

¶ Sole.] This word [ſole] is to be applied to five ſeverall things, viz. buying, ſelling, making, working, and uſing; four of which are ſpeciall, and the laſt, viz. (ſole uſing) is ſo generall, as no Monopoly can be raiſed, but ſhall be within the reach of this ſtatute, and yet for more ſurety theſe words [or of any other Monopolies] are added: and by reaſon of theſe words [ſole uſing] divers proviſions are made by this Act, as hereafter ſhall appear.

¶ Of any thing.] As the words before were generall, ſo theſe words [of any thing] are of a large extent. Res enim generalem habet ſignificationem, quia tam corporea, quam incorporea, cujuſcunque ſunt generis, naturæ, ſive ſpeciei, comprehendit: and this word cauſeth ſome exceptions hereafter to be made, whereof we ſhall ſpeak in their proper place.

¶ Whereby any perſon or perſons, &c.] For this ſee the Statute of Magna Carta, ubi ſupra: and this clauſe is impliedly warranted by theſe words [or of any other Monopolies] in the firſt clauſe of the Purview.

¶ Shall be for ever hereafter examined, heard, tried, and determined by and according to the Common laws of this Realm, & not otherwiſe.] This act having declared againſt al monopolies, &c.

&c. to be void by the Common law, hath provided by this clauſe, that they ſhall be examined, heard, tried, and determined in the Courts of the Common law according to the Common law, and not at the Councell Table, Star-chamber, Chancery, Exchequer chamber, or any other Court of like nature, but only according to the Common laws of this Realm, with words negative, and not otherwiſe: For ſuch boldneſſe the Monopoliſts took, that often at the Councell Table, Star-chamber, Chancery, and Exchequer chamber, petitions, informations, and bils were preferred in the Star-chamber, &c. pretending a contempt for not obeying the commandements and clauſes of the ſaid grants of Monopolies and of the proclamations, &c. concerning the ſame: for the preventing of which miſchief this branch was added.

¶ That all perſon and perſons, bodies politique and corporate whatſoever, which now are, or hereafter ſhall be, ſhall ſtand, and be diſabled, and uncapable, &c.] This branch for further extirpation of all Monopolies, diſableth all men, &c. to have, that is, to take any Monopoly, or to uſe, exerciſe, or put in ure any Monopoly, &c. whereby the wiſh and deſire of the Poet is granted.

Funditus extirpa Monopolas & Nomopolas;
Hic labor, hoc opus eſt; Hercule major eris.
Paucorum nocuit ſcelerata licentia multis,
Argento mutat dum Monopola piper.

¶ If any perſon or perſons after the end of forty dayes next after the end of this preſent Seſsion of Parliament ſhall be hindred, grieved, diſturbed, or diſquieted, &c.]

By this branch Six things are provided and enacted. 1. Remedy is given to the party grieved at the Common law by action or actions to be grounded upon this ſtatute. 2. This remedy may be had in the Court of the Kings Bench, Common Pleas, and Exchequer, or any of them, at the election of the party grieved. 3. The party grieved ſhall recover treble dammages, and double coſts. 4. No eſſoin, protection, wager of law, aid prayer, priviledge, injunction, or order of reſtraint to be allowed in any ſuch action. By [aid prayer] is intended as well the Writ de domino rege inconſulto, as the uſuall form of aid prayer, for both are to one end, and [order of reſtraint] was ad ded. for the Councell Table, Star-chamber, Chancery, Exchequer Chamber, and the like.

¶ 5. If any perſon or perſons ſhall after notice given, &c. cauſe or procure any ſuch action to be ſtayed or delayed before judgement, by colour or means of any order, warrant, power or authority, ſave onely of the Court wherein ſuch action ſhall be brought and depending, the perſon or perſons ſo offending ſhall incur the danger of Premunire, &c.

This clauſe extends to the Priby Councell, Star-chamber, Chancery, Exchequer Chamber, and the like, and likewiſe to thoſe that ſhall procure any warrant, &c. from the King, &c. and ſo it was reſolved by a Committee of both Houſes before this bill paſſed; but it extendeth not to the Judges of the Court before whom any ſuch action ſhall be brought, for before judgments, dayes muſt be given by orders of Court, &c.

¶ 6. Or after judgement had upon ſuch action ſhall cauſe or procure execution of or upon any ſuch judgement, to be ſtayed by colour or means of any order, warrant, power or authority, ſave only by writ of Error and Attaint, the perſon or perſons ſo offending ſhall incur the danger of Premunire, &c.

This clauſe is more generall then the former, being the fifth clauſe, for this extendeth alſo to the Judges of the Court where the action is brought or depending, if any ſtay or delay be uſed by them after judgement, and ſo it was reſolved as is aforeſaid.

There be in this Act concerning Monopolies or ſole buying, &c. many Proviſoes. The firſt is, That this Act ſhall not extend to any Letters patents or grants of priviledge heretofore made of the ſole working or making of any manner of new manufacture: but that new manufacture muſt have ſeven properties. First, it muſt be for twenty one years or under. Secondly, it muſt be granted to the firſt and true inventer. Thirdly, it muſt be of ſuch manufactures, which any other at the making of ſuch Letters Patents did not uſe: for albeit it were newly invented, yet if any other did uſe it at the making of the Letters Patents, or grant of the priviledge, it is declared and enacted to be void by this Act. Fourthly, the priviledge muſt not be contrary to law: ſuch a priviledge, as is conſonant to law, muſt be ſubſtantially and eſſentially newly invented; but if the ſubſtance was in eſſe before, and a new addition thereunto, though that addition make the former more profitable, yet is it not a new manufacture in law: and ſo was it reſolved in the Exchequer Chamber Paſch. 15 Eliz. in Bircots caſe for a priviledge concerning the preparing and melting, &c. of lead ore: for there it was ſaid, that that was to put but a new button to an old coat: and it is much eaſier to adde then to invent. And there it was alſo reſolved, that if the new manufacture be ſubſtantially invented according to law, yet no old manufacture in uſe before can be prohibited. Fifthly, nor miſchievous to the State by raiſing of prices of commodities at home. In every ſuch new manufacture that deſerves a priviledge, there muſt be Urgens neceſſitas, and evidens utilitas. Sixthly, nor to the hurt of trade. This is very materiall and evident. Seventhly, nor generally inconvenient. There was a new invention found out heretofore, that Bonnets and Caps might be thickned in a fulling mill, by which means more might be thickned and fulled in one day then by the labours of fourſcore men, who got their livings by it. It was ordained that Bonnets and Caps ſhould be thickned and fulled by the ſtrength of men, and not in a fulling mill, for it was holden inconvenient to turn ſo many labouring men to idleneſſe. If any of theſe ſeven qualities fail, the priviledge is declared and enacted to be void by this Act: and yet this Act, if they have all theſe properties, ſet them in no better caſe, then they were before this Act.

Concerning new manufactures and heretofore granted, &c.

Paſch. 15 Eliz. in the Exchequer Chamber, Bircots caſe.

Rot. Parl. 21 E. 4. nu. 29.
22 E. 4. ca. 5.
7 E. 6. ca. 6.
1 Jacobi ca. 5.

The ſecond Proviſo concerneth the priviledge of new manufactures hereafter to be granted: and this alſo muſt have ſeven properties: firſt, it muſt be for the tearme of fourteen years or under: the other ſix properties muſt be ſuch as are aforeſaid, and yet this Act maketh them no better, then they ſhould have been, if this Act had never been made, but only except and exempt them out of the Purview, and penalty of this Law.

Concerning new manufactures hereafter to be granted, &c.

The cauſe wherefore the priviledges of new manufactures either before this Act granted, or which after this Act ſhould be granted, having theſe ſeven properties, were not declared to be good, was, for that the reaſon wherefore ſuch a priviledge is good in law is, becauſe the inventer bringeth to & for the Common wealth a new manufacture by his invention, coſt and charges, and therefore it is reaſon, that he ſhould have a priviledge for his reward (and the incouragement of others in the like) for a convenient time: but it was thought that the times limited by this Act were too long for the private, before the Common wealth ſhould be partaker thereof, and ſuch as ſerved ſuch priviledged perſons by the ſpace of ſeven years in making or working of the new manufacture (which is the time limited by law of Apprenticehood) muſt be Apprentices or ſervants ſtill during the reſidue of the priviledge, by means whereof ſuch numbers of men would not apply themſelves thereunto, as ſhould be requiſite for the Common wealth, after the priviledge ended. And this was the true cauſe wherefore both for the time paſſed, and for the time to come, they were left of ſuch force, as they were before the making of this Act.

The third proviſo is, That this Act ſhall not extend or be prejudicial to any grant or priviledge, power or authority heretofore made, granted, allowed, or confirmed by any Act of Parliament now in force, ſo long as the ſame ſhall ſo continue in force. This was added for that the City of London & other Cities & Boroughs,

&c.

&c. have ſome priviledges for buying, ſelling, &c. by Acts of Parliament. For example, The ſtatute of 1 & 2 Ph. & Mar. giveth a Priviledge to Cities, Boroughs, Towns corporate, & Market Towns, for the ſale by retale of certain wares and Merchandizes, and ſome other Acts of Parliament in like caſe: all which doe prove, that ſuch priviledges could not be granted by Letters patents. But ſpecially this clauſe was added in reſpect of the generality of theſe words [ſole uſing.] 1 & 2 Ph. & Mar. cap. 7.

The fourth Proviſo. Provided alſo, and it is hereby further intended, declared, and enacted, that this Act, &c. ſhall not in any wiſe extend, or be prejudiciall unto the City of London, &c.

By this Proviſo, not only the Grants, Charters, and Letters Patents to any City or Towne Corporate, &c. but alſo the cuſtomes uſed within the ſame, are excepted out of this Act: which ſeemeth to be more then need, becauſe the firſt clauſe of the Purview of this Act doth extend but to Commiſſions, Grants, Licenſes, Charters, and Letters Patents.

The fifth Proviſo doth except out of the Purview and penalty of this ſtatute four things, but leaveth them of the like force and effect, and no other, as this Act had never been made. Firſt, the priviledge concerning printing made, or hereafter to be made. Secondly, Commiſſions, Grants, and Letters Patents made or hereafter to be made for or concerning the digging, making, or compounding of Salt-peter or Gunpowder. Thirdly, or the caſting or making of Ordnance, or ſhot for Ordnance. Fourthly, Grants and Letters patents heretofore made, or hereafter to be made of any Office or Offices heretofore erected, made, or ordained, and now in being, and put in execution, (other then ſuch Offices as have been decried by any his Majeſties Proclamations.) So as to the thing by this Branch excepted, Four things are required. Firſt, that it be an Office. This extendeth only to lawfull Offices for divers cauſes. 1. It was neceſſary to except lawful Offices in reſpect of theſe words [ſole uſing.] 2. Offices are duties, ſo called, to put the Officer in minde of his duty. 3. That which is voide and againſt Law, is no duty, unleſſe it be not to uſe them. 4. Such as are erected againſt Law, are Monopolies and Oppreſſions of the people, and no Offices. 5. In Acts of Parliament lawfull Offices are intended, as in like caſes hath been often adjudged: therefore unlawfull Offices are all taken away by this Act, and lawfull Offices remain and continue. Lit. Sect. 731. Pl. com. 246. b. 11 H. 4. 80. 4 E. 4. 31. pl. 2.

Secondly, that it be an Office heretofore erected. By this Act the erection of all new Offices, which were not erected before this Act, are wholly taken away.

Thirdly, that it be now in being, and put in execution. Though the Office were erected before this Act, yet if it were not in being and put in execution the 19 day of February in the 21 year of the reigne of King James (at what time this Parliament begun) it is cleerly taken away by this Act.

Fourthly, that it be ſuch an Office, as hath not been decried, (for ſo is the Record of Parliament, and not [decreed] as it is in the printed book) by any of his Majeſties Proclamations: for all ſuch Offices as be decried, that is, either forbidden, or prohibited by any of his Majeſties Proclamations, or where the party grieved is left to his remedy at the Common law by any Proclamation, they be alſo decried; for being contrary to the lawes of this Realme, as it is declared and enacted by this Act, they are alſo decried with a witneſſe, and can never be granted hereafter. See the Proclamatiõ bearing date 10 July, An. 19 Ja. Regis, and another Proclamation bearing date, 20 Martii An. 19 Ja. Regis.

The fifth Proviſo concerning the making of Allom, or Allom-Mines, needed not, for they belong to the Subject in whoſe ground ſoever the Oare is: & therefore any priviledge thereof cannot be granted, but in the Kings own ground.

The ſixth Proviſo concerns the Hoſtmen of New-Caſtle, &c. This clauſe was inſerted in reſpect of theſe words [ſole uſing.]

The reſt of the Proviſoes concern particular perſons, and do exempt and except certaine ſuppoſed priviledges out of the Purview and penalty of this Law, but leaveth them of like force and effect, as they were before the making of it.

But it is to be obſerved, that all the Proviſoes after the firſt, extend only to the ſuppoſed priviledges therein particularly mentioned, already granted, and not to any to be granted hereafter.

CAP.

CAP. LXXXVI.

Againſt thoſe that obtaine power to diſpenſe with penall lawes, and the forfeitures thereof.

The ſtatute of 21 Iac.cap.3.

IT appeareth by the Preamble of this Act, that all Grants of the benefit of any penall law, or of power to diſpenſe with the law, or to compound for the forfeiture, are contrary to the ancient fundamentall lawes of this Realm.

In Exilio Hugonis.

It was one of the Articles wherefore the Spencers in the reigne of King E.2. were ſentenced, that they procured the King to make many Diſpenſations. Per lour malveis counſell deſeaſant ceo q̄ le Roy ad grant p̄ Parliament p̄ bone advice.

Rot.Parliam. 50 E 3.nu.17. & 28.

In 50 E. 3. Richard Lions a Merchant of London, and the Lo. Latimer, were ſeverally ſentenced in Parliament for procuring of Licenſes and Diſpenſations to tranſport Wools, &c.

See 28 H.6.uu. 30.30.before

The Purvien of the Act of 21 Ia. ca.3.

IT is declared and enacted, that all Commiſſions, Grants, Licenſes, Charters, and Letters patents, heretofore made or granted, to any perſon or perſons, bodies politick, or corporate, of any power, liberty, or faculty, to diſpenſe with any others, or to give licence or toleration to doe, uſe, or exerciſe any thing againſt the tenure or purport of any Law or Statute, or to give, or make any warrant for any ſuch dipenſation, licence or toleration to be had, or made, or to agree, or compound with any others for any penaltie or forfeitures limited by any ſtatute, or of any grant or promiſe of the benefit, profit, or commoditie of any forfeiture, penalty or ſumme of money, that is or ſhall be due by any Statute before judgement thereupon had, and all Proclamations, Inhibitions, Reſtraints, Warrants of aſſiſtance, and all other matters and things whatſoever, any way tending to the inſtituting, erecting, ſtrengthening, furthering, or countenancing of the ſame or any of them, are altogether contrary to the Lawes of this Realme, in no wiſe to be put in execution.

The offence deſcribed.

And ſhall be for ever hereafter examined, heard, tried, and determined, by and according to the Common Lawes of this Realme, and not otherwiſe, &c.

Provided alſo, that this Act ſhall not extend to any Warrant or Privie Seale made or directed, or to be made or directed by his Majeſtie, his Heirs or Succeſſors to the Juſtices of the Courts of Kings Bench, Common Pleas, Barons of the Exchequer, &c. and other Juſtices for the time being, having power to heare and determine, &c. to compound, &c.

This Act moved from the Houſe of Commons. Now let us peruſe, firſt, the words of the Purvien of this Act, and ſecondly, of this Proviſo.

In and by the Purvien five things are declared & enacted to be void, and contrary to the ancient fundamentll lawes of this Realme. Firſt, all Commiſſions, Licenſes, Charters, and Letters patents of any power, liberty or faculty, or to give licenſe or toleration to doe, uſe, or exerciſe any thing againſt any Law or Statute. The reaſon hereof is notably expreſſed by the reſolution of all the Judges of England, in the caſe of penall ſtatutes, whereunto we refer you.

Hil.2 Iac.lib.7. fo.36.b.the caſe of penal ſtatutes.

¶ 2 Or

¶ 2 Or to give or make any warrant for any ſuch diſpenſation, licence, or toleration.] For this branch alſo, ſee the ſaid caſe of penall Statutes, ut ſupra.

¶ 3 Or to agree or compound with any others for any penalty or forfeitures limited by any ſtatute.] By this branch, all Commiſſions to agree or compound with any others for any penalty or forfeiture limited by any ſtatute, are declared to be void, and againſt the ancient fundamentall lawes of the Realme. The great inconvenience hereof appeared in the proceedings of Empſon and Dudley, in the reigne of King H. 7. who had the Office of maſters of the forfeitures: and by colour of their Commiſſion and Office, did moſt intolerably and unlawfully oppreſſe, burden, and depauperate the Subjects. Let them which follow their ſteps be afraid of their fearfull end: Qui eorum veſtigia ſequuntur, eorum exitus perhorreſcant. The like oppreſſion was uſed by certain Commiſſioners for compoſitions to be made for offences committed againſt penall ſtatutes, in the reigne of Queen Mary. This Branch hath ſtrucken at the root, and prevented this miſchief for ever hereafter.

¶ 4 Or of any grant or promiſe of the benefit, profit, or commodity of any forfeiture, penalty, or ſum of money, that is or ſhall be due by any ſtatute before judgement thereupon had.] This branch declareth not only the grant to be void, and againſt the lawes of this Realme, (for the which, ſee the reſolution of all the Judges in the ſaid caſe of penall ſtatutes, ubi ſupra.) but the promiſe thereof alſo. And the reaſon that the Judges yeeld there, is notable, in theſe words, For that in our experience it maketh the more violent and undue proceeding againſt the Subject, to the ſcandall of Juſtice, and offence of many. So as the grant or promiſe of any forfeiture before judgement, is both againſt law, and inconvenient. And if it be ſo in caſe of a forfeiture or penalty, much more in caſe of life and death, for the forfeiture, &c. of any man to be begged, before he be duly and lawfully attainted. For, as the Judges ſay, there is the more violent and undue proceeding againſt the ſubject to the ſcandall of juſtice, and the offence of many: and therefore ſuch beggers are offenders, worthy of ſevere puniſhment.

Againſt theſe hunters for blood the Prophet ſpeaketh thus, Perit ſanctus de terra, & rectus in hominibus non eſt, omnes in ſanguine inſidiantur, vir fratrem ſuum ad mortem venatur. There is not a godly man upon earth, there is not one righteous amongſt men, they all lye in wait for blood, and every man hunteth his brother to death. Micah 7. 2.

¶ 5 And all Proclamations, Inhibitions, Reſtraints, Warrants of aſſiſtance, and all other matters or things any way tending to the inſtituting, erecting, ſtrengthening, &c.] This is the like clauſe, and is ſo to be expounded, as before hath been in the Chapter of Monopolies.

Concerning the ſaid Proviſo, the Judges before whom the cauſe dependeth, and that have power to heare and determine the ſame, who are preſumed to be indifferent between the King and the Subject, may by warrant of Privie Seale, &c. compound, &c. for the King onely, after plea pleaded by the defendant.

There is another Proviſo concerning Letters Patents, or Commiſſions for licenſing of keeping of any Tavern, or ſelling, &c. of all wines, &c. or for the making of any compoſitions for ſuch licenſes, ſo as the benefit of ſuch compoſitions be reſerved, and applyed to or for the uſe of his Majeſtie, his Heirs or Succeſſors, and not for the private uſe of any other perſon or perſons.

The report of the ſaid caſe of penall ſtatutes was a principall motive of the Kings Book, mentioned in the preamble of this Act: And that Book amongſt other juſt and weighty cauſes moved the King to give his Royall aſſent to this Act of Parliament, &c. whereof we have ſpoken.

CAP.

CAP. LXXXVII.

Againſt Concealours (*turbidam hominum genus*) and all pretences of Concealements whatſoever.

Statut. de Anno 21 Jac. cap. 2.

THat the Kings Majeſtie, his Heirs, or Succeſſors, ſhall not at any time hereafter ſue, impeach, queſtion, or implead any perſon or perſons, bodies politick, or corporate, &c.

The Act is long, and need not here be rehearſed. Yet will we peruſe and explaine the ſeverall branches and parts of the Act.

Before the making of this ſtatute, in reſpect of that ancient prerogative of the Crowne, that nullum tempus occurrit Regi, the titles of the King were not reſtrained to any limitation of time; for that no ſtatute of limitation that ever was made, did ever limit the title of the King to any Mannors, Lands, Tenements, or Hereditaments, to any certaine time. And where many Records and other Monuments, making good the eſtate and intereſt of the Subject, either by abuſe or negligence of Officers by devouring time were not to be found; by means whereof, certaine indigne and indigent perſons prying into many ancient titles of the Crown, and into ſome of later time concerning the poſſeſſions of divers and ſundry Biſhopricks, Dean and Chapters, and the late Monaſteries, Chauntries, &c. of perſons attainted, and the like, have paſſed ſurreptitiouſly in Letters Patents, oftentimes under obſcure and generall words, the Mannors, Lands, Tenements, and Hereditaments of long time enjoyed by the Subjects of this Realm, as well Eccleſiaſticall as Temporall: Now to limit the Crown to ſome certaine time, to the end, that all the Subjects of this Realm, their Heirs and Succeſſors, may quietly have, hold, and enjoy, all and ſingular Mannors, Lands, Tenements, and Hereditaments, which they, their anceſtors or predeceſſors, or any other, by, from, or under whom they claime, have of long time enjoyed; this Act was made and moved from the Houſe of Commons, the body whereof conſiſteth of three parts. *Firſt*, that part which above is in part rehearſed, conſiſteth on Three Branches.

The firſt part.

Firſt, That the King, his Heirs or Succeſſors, ſhall not at any time hereafter, ſue, impeach, queſtion, or implead any perſon or perſons, bodies politick or corporate, for, or in any wiſe concerning any Mannors, &c. *Secondly*, Or for, or concerning the revenues, iſſues, or profits thereof. *Thirdly*, Or make any title, claime, challenge, or demand, &c.

This part is exclusive and negative: and herein ſix things are to be obſerved. 1. This clauſe extendeth to all manner of ſuits, &c. either in Law, or in Equity. 2. To all manner of Courts whatſoever. 3. It extendeth not onely to all manner of ſuits, but to all impeachments, queſtionings, impleadings, making of title, claims, challenges, or demands. 4. Under theſe words [right, and title] not only bare rights and titles are comprehended, but reall eſtates alſo. 5. Not onely ſuits, &c. for, or concerning any Mannors, &c. but for, or concerning the revenues, iſſues, or profits, &c. and this extendeth to the ancient demeans of the Crowne, which are mentioned to be reſtrained by an Act of 11 H. 4. 6. So as all Writs of Scire fac' or other Proces upon any Record; all informations of intruſion, or charging any man as Bayliffe: all finding of Offices, either of intitling the King, or of information are reſtrained, not only within theſe words [impeach or queſtion] but alſo within theſe words [or make any title, claime, challenge, or demand] which are large and beneficiall words, and all other ſuits, &c. of

Rot. Par. 11 H. 4. nu. 23. not imprinted.

what

what kind or nature ſoever. But this Negative clauſe muſt have Foure incidents. 1. The Kings right and title muſt accrew unto him above threeſcore yeers paſt before the Nineteenth day of February, in the 21 yeare of King James, which was the day of the beginning of this Parliament. The reaſon hereof was, that if any title of eſcheat, forfeiture, &c. accrewed within threeſcore yeers, then it ſhould be out of this Act: for generally the time of limitation to bar the King was threeſcore yeers, but ſuch right or title muſt now be in eſſe. 2. Unleſſe the King or his progenitors, &c. or any, under whom hee or they claime, have beene anſwered by force and virtue of any ſuch right or title to the ſame, the rents, revenues, iſſues or profits thereof within threeſcore yeers, &c. In this branch theſe words [by force and virtue of any ſuch right or title] were materially added, for otherwiſe if the King had been anſwered the rents, revenues, &c. by reaſon or pretext of Wardſhip, primer ſeiſon, extent, or the like, it might have made a doubt whether ſuch an anſwering of the revenues, &c. had been within this Act; which doubt is cleared, that it muſt be by force or virtue of any ſuch right or title, whereby the King impeacheth the ſtate of the ſubject. 3. Or that the ſame have been duly in charge to his Majeſty, or to the late Queen Elizabeth within the ſpace of threeſcore yeers. Duly in charge in judgment of law, is the roll of the pipe: for although a note before the Auditor or any other may be a mean to bring it in queſtion, and to bee put in charge, yet that is not in judgment of law ſaid to be duly in charge, unleſſe it be in charge in the pipe. 4. Or have ſtood in ſuper of record within the ſaid ſpace of threeſcore yeers. It cannot ſtand in ſuper, unleſſe the thing in queſtion were before duly in charge.

But there is a good Proviſo added towards the end of this Act, viz. that no putting in charge, or ſuper, or anſwering of the farm rents, revenues, or profits, &c. in four caſes ſhall be within this Act, viz. By force, colour or pretext of any Letters Patents of concealments: They were called Letters Patents of concealments, becauſe either they had a clauſe before the habendum: quæ quidem maneria nuper fuerunt à nobis concelata, ſubtracta, vel injuſte detenta, or to the like effect; or elſe a Proviſo after the habendum to the like effect. Letters Patents of concealment were granted in Queen Maries time; and the firſt that I find, were granted to Sir George Howard: and in all ſucceeding Acts of Parliament of confirmation of Letters Patents, Letters Patents of concealments are excepted.

2. Or defective title. By Letters Patents paſſed by the warrant of certaine Commiſſioners under the Great Seale for compoſitions of defective titles, pretending the ſame to be for the Kings benefit, and ſafety of the ſubject, in which Letters Patents no words of concealement, &c. are mentioned, but yet upon the matter, they were ſuppoſed to be concealed, &c. from the Crown.

3. Or of lands, tenements or hereditaments out of charge. This was a new device to have a certificate, that they were not in charge, and then to take a grant from the King, for a very ſmall compoſition, &c. And theſe were but inventions and ſubtill devices to deceive the King, to rob him of his tenures, and to the infinite vexation and trouble of the ſubject, all which miſchiefs are now remedied by this Act.

4. Or by force, colour or pretext of any Commiſſion or other authority to finde out concealments, defective titles, or land, &c. out of charge. This was a neceſſary clauſe to be added, for of this kind there were infinite numbers.

Out of this firſt part all liberties and franchiſes be excepted.

The 2. part.

¶ And that every perſon and perſons, bodies politike and corporate, their heirs and ſucceſſors, and all claiming from, by, or under them, or any of them, for and according to their ſeverall eſtates and intereſts, which they have, or claim to have in the ſame reſpectively, ſhall hereafter quietly and freely have, hold and injoy againſt his Majeſty, his heirs and ſucceſſors, &c.

This is the second part of the body of the Act, and as the first part is Negative and exclusive of the right and title of the King, so this part is Affirmative, and establishing the state of the subject.

The mischief before this Statute was in two sorts, viz. either when the King had any estate vested, or continued in him: or where the King had but a bare right. For example; the Kings tenant seised of lands, &c. in fee is attainted of felony, and dyeth, the King hath a reall estate in him: but if before the felony the Kings tenant were disseised, and after is attainted, and dieth, now hath the King but a bare right. In both these cases, & sic in similibus, the subject is provided for by this Act, both by the first part, and by this also; for where in this part it is said, according to their and every of their severall estates and interests which they have or claim: If they have an estate, and the King but a bare right or title, then are they within these words [which they have]; and if the King hath a reall estate in him, then are they within these words [or claime]: so as the remedy is applyed to both the mischiefs. Againe, the words in this part are further, have held, or enjoyed. That is, where the subject hath an estate, and the King but a bare right or title.

¶ Or taken the rents, issues, revenues, or profits thereof.] These words extend to all cases where the reall estate is in the King: Hereby is understood the actuall taking of the rents, issues, revenues, or profits by one that claims an interest in the land: for albeit the King may in law charge him as Bailif, yet without question, de facto, he did take the rents, issues, revenues and profits, and that sufficeth to answer the letter and meaning of this Act.

Moreover, the words of this part are, [against him, his heirs or successors] So as admit in the case put before, the Kings tenant being disseised, as is aforesaid, before his attainder of felony, that that disseisor had been disseised, or had morgaged the land before this Statute, this Act in this case barreth the King of his right & title, & to that end worketh upon the state of the disseisor or Morgagee; but yet the first Disseisor or the Morgagee for the condition performed or broken may reenter; for the words of this part be [against the King, his heirs and successors] so as the bar is onely against them: and every subject shall take benefit of this Act, for the Kings right and tittle is thereby utterly barred: and there is a saving hereafter in this Act to all persons, &c. other then the King, &c. all such right, &c. as they ought to have had before this Act.

This part extendeth not to liberties and franchises.

Now followeth the third part of the Parbien of this Act.

The 3. part.] And furthermore that every person or persons, bodies politike and corporate, their heirs and successors, &c. shall quietly and freely have, hold, and enjoy all such Mannors, &c. as they now have, claim, and injoy, &c. against all and every person and persons, their heirs and assigns having, claiming, or pretending to have any estate, right, title, interest, claim or demand whatsoever, &c. by reason, or colour of any Letters Patents, or grants upon suggestion of Concealment, or wrongfull detaining, or not being in charge, or defective titles, or by, from, or under any Patentees, &c. of or for which Mannors, &c. no verdict, &c.

This part secures the subject against the subject, viz. against Patentees and Grantees of concealments, defective titles, or lands not in charge, and all claiming under them. A beneficiall Law both for the Church and Common wealth, in respect of the multitude of Letters Patents and Grants of these natures and qualities, and many of them of large extents, and in generall words, and had passed through the hands of many indigent and needy persons, &c.

This part extendeth to Liberties and Franchises, which the Former two parts did not.

The

The two firſt Proviſoes are plain, and in effect are included in the body of the Act. The ſecond Proviſo was neceſſary to preſerve tenures: the ſaving needeth no explanation. The third Proviſo is particular and evident. The fourth Proviſo, Provided alſo, and be it enacted, that where any fee farme rent, &c. This was added for the preſerving of the Kings fee farms and rents out of ſuch Mannors, &c. which are eſtabliſhed and made ſure by this Act. For example: King E. 6. did grant the Mannor of D. which came to him by the ſtatute of Chanteries, to I. S. and his heires, reſerving a fee farm, or any other rent, which grant for ſome imperfection was inſufficient in law to paſſe the ſaid Mannor, and yet is eſtabliſhed and made ſure by this Act. This Proviſo maketh good the fee farm or rent to the King, if he hath been anſwered the ſame by the greater part of forty yeers laſt paſt.

The laſt Proviſo is particular and evident.

Of the benefit of this Act, the poor doe participate, as well as the rich, for hereby (amongſt other things) above an hundred Lay Hoſpitals having had Priests within them in thoſe daies to pray & ſing for ſoules, &c. (if need were) are eſtabliſhed againſt all vexations and pretences of concealments.

See an excellent Act made againſt theſe Harpyes or Helluones, that under obſcure words endeavoured ſurreptitiouſly in a Patent of concealment to have ſwallowed up the greateſt part of the poſſeſſions of that ancient and famous Biſhoprick of Norwich, which by the induſtry and proſecution of the then Attorney generall was overthrown, and yet for more ſurety in a matter of ſo great weight preferred a Bill in Parliament for eſtabliſhing of the Biſhoprick, which in the end paſſed as a law, anno 39 El. ubi ſupra.

See 39 El. ca. 22. which is worthy to be read. See this caſe at large in the 4. pt of the Inſtitutes cap. Conſiſtory Courts, &c.

Triſtius haud illis monſtrum, nec ſævior ulla
Peſtis & ira Dei ſtygiis ſeſe extulit undis:
Virginei volucrum vultus, fœdiſſima ventris
Proluvies, uncæque manus, & pallida ſemper
Ora fame.

CAP. LXXXVIII.

Againſt Vexatious Relators, Informers, and Promooters upon penall Statutes.

THat all offences hereafter to be committed againſt any Penall Statute, for which any common Informer or Promooter may lawfully ground any popular action, bill, plaint, ſuit or information, &c. ſhall be commenced, ſued, proſecuted, &c. before the Juſtices of Aſſiſe, Juſtices of Niſi prius, &c. in the Counties where the offences were committed, and not elſewhere.

Statutum de 21 Jac. Reg. c. 4.

Whereas a good and profitable law was made in the 18 yeare of Queene El. for the eaſe and quiet of the ſubject, and for the regulating of Informers upon penall ſtatutes, inflicting corporall puniſhments in certaine caſes upon them: And whereas two other good laws were made for the ſame ends, the one in the 28 yeare, and the other in the 31 yeer of the ſaid late Queenes reign, which yet ſtand and remain in force: yet theſe Acts did not meet with all the miſchiefs and grievances offered to the ſubject by the Relators, Informers, and Promooters, (turbidum hominum genus) but theſe foure miſchiefs and grievances remained ſtill.

18 El. ca. 5. 28 El. ca. 5. 31 El. ca. 10.

Firſt, many penall laws obſolete, and in time grown apparently impoſſible, or inconvenient to be performed, remained as ſnares, whereupon the Relator, Informer, or Promooter did ver and intangle the Subject; Such as were the ſtatutes made anno 37. E. 3. cap. 3. concerning the prices of Poultry, and 34 E. 3. ca. 20. concerning tranſportation of Corne, and 3 E. 4. cap. 2. concerning Corne not to be brought into the Realm, and 4 H. 7. ca. 9. concerning the prices of Hats and Caps, and 14 R. 2. cap. 7. concerning the paſſing of Tyn out of the Realm, and 15 R. 2. cap. 8. Concerning the carriage of Tyn to Calys, and 4 H. 5. cap. 3. concerning making Pattens of Aſp, and 4 H. 7. ca. 8. concerning the prices of broadcloth, &c. and 11 H. 7. ca. 2. concerning Vagabonds, unlawfull games, and Alehouſes, &c. and one other ſtatute in the 19. year of H. 7. cap. 12. concerning thoſe matters, and 11 H. 6. cap. 12. concerning Marchandlers, and the price of candles, and 34 H. 8. cap. 7. concerning the ſale of Wines, and 28 H. 8. cap. 14. concerning the prices of Wines, and 27 H. 8. Stat. de Monaſteriis, concerning keeping of houſe and houſholds upon ſcites of Monaſteries, &c. and 4 H. 7. cap. 19. concerning houſes of husbandry and tillage, and 7 H. 8. ca. 1. concerning letting down of townes, and 27 H. 8. cap. 22. concerning decay of houſes and Incloſures, and 5 E. 6. ca. 5. for the maintenance of tillage, &c. and 5 Eliz. cap. 2. for maintenance and increaſe of Tillage, and 14 R. 2. cap. 4. 8 H. 6. ca. 23. and 5 E. 6. cap. 7. concerning the buying of Wooll, woollen parn, &c. and 33 H. 8. cap. 5. concerning the keeping of great horſes, the ſtatute of Wincheſt. in the time of E. 1. concerning Harneſſe and Arms, Artic. ſuper Cart. c. 20, concerning making of Rings, Croſſes, and Locks, and 37 E. 3. cap. 7. that makers of white veſſell ſhould not guild. and 2 H. 5. ca. 4. Stat. 2. that Goldſmiths ſhould not take more then forty ſix ſhillings eight pence for a pound of Troy ſilver guilt, & 2 H. 6. ca. 14. that no ſilver ſhall be bought for more then thirty ſhillings the pound of Troy, & 2 H. 4 ca. 6. againſt the bringing in of Coin of Flanders, Scotland, and other Forain Coin, & 13 R. 2. ca. 8. and 4 H. 4. cap. 25. concerning the prices of Hay and Oats ſold by Hoſtlers, and 4 & 5 Ph. & Mar. cap. 5. concerning the putting to ſale of coloured cloth: and another part of the ſame ſtatute concerning the myſtery of making, weaving, or rowing of woollen cloth, &c. and 18 El. ca. 16. for toleration of certaine Clothiers to dwell out of townes corporate: and many other unneceſſary ſtatutes unfit for this time, about the number of threeſcore, are repealed by an Act made at this Parliament in the 21 year of the reign of King James, as by that Act appeareth: and many like Acts are not continued, as by the conference between that Act & other former Acts of continuance may appear: So as theſe ſnares that might have lien heavy upon the ſubject by this and other former ſtatutes either are repealed, or not continued.

13 E. 1. Stat. de Winton.

The ſecond miſchief was, that common Informers, and many times the Kings Attorney drew all Informations for any offence, in any place within the Realm of England againſt any penall law, to ſome of the Kings Courts at Weſtminſter, to the intolerable charge, veration, and trouble of the Subject; and it was feared that Weſtminſter Hall would labour of an Apoplery by drawing up all ſuits unto it, as the naturall body doth eabeſcere, when the humours of the body are drawn up unto the head, which in the end (if it be not prevented) turneth to an Apoplery.

The third miſchief was, that in Informations, &c. the offence ſuppoſed to be againſt the penall law, and to be committed in one County, was at the pleaſure of the Informer, &c. alledged in any County where he would, where neither party nor witneſſe was known, againſt the right inſtitution of the law, that the Jury (for their better notice) ſhould come de vicineto of the place where the fact was committed.

The fourth miſchief was, that in divers caſes the party Defendant in Informations or Actions upon the ſtatute, were driven to plead ſpecially, which was both chargeable and dangerous to him, if his plea were not both ſubſtantiall and formall alſo.

Theſe three miſchiefs laſt mentioned are expreſſly and abſolutely provided for by

by this Act, which moved from the houſe of Commons. And ſo did the Act of continuing and reviving of divers ſtatutes, and repeal of divers others. 21 Jac. cap. 28.

The firſt part of the Parvien beginning thus. For remedy whereof be it enacted by the authority of this preſent Parliament, that all offences, &c. The firſt part of the Act.

This clauſe conſiſteth upon Three parts. Firſt, affirmative: and this is divided into two branches. 1. For the Informations, &c. It is enacted, that where a common Informer might before this Act have informed upon any penall ſtatute, before Juſtices of Aſſiſe, Juſtices of Niſi prius, or Juſtices of Oyer and Terminer, or Juſtices of Peace in their generall or quarter Seſſions; there a common Informer may informe, &c. 2. Before what Judges; this Act appoints no new Judges, but ſuch as former penall lawes appointed, viz. the Juſtices before mentioned, or any of them according to the former Act.

The ſecond part is reſtrictive, reſtraining any Information, &c. to be commenced, ſued, &c. either by the Attorney Generall, or by any Officer, common Informer, or any other perſon whatſoever, in any of the Kings Courts at Weſtminſter. So as the Kings Bench, Star-chamber, Chancery, Common-Pleas, Exchequer or Exchequer-Chamber, cannot receive or hold plea of any Information, &c. upon any penall ſtatute, either by the Kings Attorny, any common Informer, or any other perſon whatſoever: but the matter ſhall be heard and determined before ſuch Juſtices as are aforeſaid in the proper County where the offence was committed.

The third part giveth the like Proces upon every popular Action, Bill, Plaint, Information, or ſuit to be commenced, or proſecuted by force; of, or according to the purport of this Act, as in an Action of Treſpaſſe, Vi & armis, at the Common law: but upon no other popular Action, Bill, &c. which is not ſued, &c. by force of this Act.

The ſecond part of this Act doth meet with the ſecond of the ſaid three miſchiefs, and ſtandeth upon three branches. The ſecond part of the Act.

Firſt, that in all Informations, &c. exhibited, &c. either for the King or any other, &c. the offence ſhall be laied and alledged, &c. in the ſaid County where ſuch offence was in truth committed, and not elſewhere.

The ſecond branch is, that if the defendant pleadeth the generall iſſue, the plaintiffe or informer upon evidence to the Jury muſt prove two things: Firſt, the offence laid in the information, &c. Secondly, that the offence was committed in that County, otherwiſe the defendant ſhall be found not guilty.

The third branch is, that for more ſurety that the offence ſhal be alledged truly in the proper County where in truth it was committed, no information, &c. ſhall be received, filed, or entred of Record, untill the Informer or Relator hath firſt taken a corporall oath before ſome of the Judges of that Court, which conſiſteth on two parts: Firſt, that the offence or offences laid in ſuch information, &c. were not committed in any other County, then where the ſame are alledged in the Information, &c. Secondly, that he believeth in his conſcience, that the offence was committed within a peer before the information or ſuit. And this Oath is to be entred of Record. And all this is to be done before the Information be received, filed, or entred of Record.

The third part of this Act meeteth with the laſt miſchiefe: for by this part the defendant may plead the generall iſſue, and give any ſpeciall matter in evidence to the Jury: which matter being pleaded, had been a good and ſufficient matter in law, to have diſcharged the defendant, &c. The third part of the Act.

This is a very beneficiall clauſe, and cleereth many queſtions at the Common law. And where it may be objected, that for want of ſufficient Clerks, the proceeding according to this ſtatute will be erroneous, and to be reverſed by Writ of Errour, ſo as it will deter Informers to Informe, &c. and in effect, lay aſleep all penall lawes. To this it may be anſwered: Firſt, that it ſhall be the fault of the Informer himſelfe; for if he informe before Juſtices of Aſſiſe or Niſi prius, 27 H. 8. f. 21. &c.

they

they have ſufficient Clerks. Secondly, I perſwade my ſelfe, that the other Juſtices will in diſcharge of their conſcience and duty, provide ſufficient Clerks. And laſtly, that few or no errors ſhall fall out in reſpect of the generall pleading.

The laſt clauſe of this Act, is this: Provided alwaies that this Act or any thing therein contained, ſhall not extend to any information, &c.

By this clauſe this Act extends not to penall ſtatutes of theſe ſorts: Concerning 1. Popiſh Recuſants for not comming to Church. 2. Maintenance, Champerty, or buying of titles. 3. The ſubſidy of Tonnage and Poundage, Wooll, &c. 4. The defrauding the King of any Cuſtome, Tonnage, Poundage, Subſidy, Impoſt, or Priſage. 5. Tranſportation of Gold, Silver, Powder, Shot, Munition of all ſorts, Wooll, Woolfels, or Leather, but that every of theſe offences may be laied or alledged to be in any County at the pleaſure of any Informer. But yet the Informer cannot informe, &c. for any of theſe offences in any of the Courts at Weſtminſter, but before the Juſtices appointed by this Act: for this clauſe extendeth onely for the laying or alledging of any of theſe offences in any County that he will.

Mic. 29. & 30. El. Coram Rege.

Inter Wideſton & Clark Maior of Nottingham, the caſe was this: Wideſton being arreſted in Nottingham by Precept in the nature of a Capias, he was impriſoned in the cuſtody of the Maior being keeper of the Gaol within the ſame towne, and before the returne of the Precept Wideſton offered to the Maior ſufficient ſurety to appeare, &c. and he refuſed to accept the ſame: whereupon Wideſton brought his Action by bill upon the ſtatute of 23 H. 6. cap. 10. whereunto the defendant pleaded the generall iſſue; and it is found by verdict againſt the defendant. In arreſt of judgment, it was ſhewed, that by the ſaid ſtatute of 18 Eliz. cap. 5. it is provided, that none ſhall be admitted or received to purſue againſt any perſon upon any penall ſtatute, but by way of information or originall action, and not otherwiſe: in reſpect of the ſaid negative words it was adjudged, that, for that the ſaid Action was brought by Bill, and not by Information or Originall, Quod querens nihil capiat per billam. See the reſt of the ſtatute of 18 Eliz. concerning Informers.

18 Eliz. cap. 5. Vi. lib. 6. fo. 19. b. Gregories caſe.

You have heard of four viperous Vermin, which endeavoured to have eaten out the ſides of the Church and Common-wealth: Three whereof, viz. the Monopoliſt, the Diſpenſer with publike and profitable penall laws for a private, and the Concealers are blown up, and exterminated: and the fourth, viz. the Vexatious Informer well regulated and reſtrained, who under the reverend Mantle of Law and Juſtice inſtituted for protection of the innocent, and the good of the Common-wealth, did vere and depauperize the Subject, and commonly the poorer ſort, for malice or private ends, and never for love of Juſtice. And theſe are worthily placed amongſt the Pleas of the Crowne, becauſe it is for the honor and benefit of the Crowne, when the Church and Common-wealth doe flouriſh in peace and plenty: for the King can never be poore when his Subjects are rich.

Hil. 36 Eliz. Rot. 135. Int. plac. Regis, coram Rege. Hamonds caſe.

George Hamond informed upon a penall ſtatute concerning ſhipping of Cloth in the name of another, Qui tam &c. againſt Edw. Griffith defendant. Hamond the Informer dyed and upon motion made by the Attorney Generall, it was the opinion of the whole Court, that he the Attorney Generall might proceed for the Queens Party after the death of the Informer.

Trin. 31 Eliz. coram Rege. Stretons caſe.

Between Stretton, Qui tam, &c. and Taylor defendant, that after a popular Action commenced, although the Attorney Generall will enter an Ulterius non vult proſequi; or if the defendant plead a ſpeciall plea, although the iſſue be, that the Attorney (to the end that there may be no jugling or Covin between the Informer and the defendant) reply onely; notwithſtanding, if the Attorney Generall will not reply, the Informer may proceed, and proſecute for his part; for the Informer by his ſuit commenced hath made of a popular Action his private, which the King cannot for the part of the Informer pardon or releaſe. And notwithſtanding in all theſe caſes before any Action or Information commenced by the Informer, but the ſuit remaining popular wherein the King onely, and no

See hereafter cap. 105. of Pardons.
37 H. 6. fo. 4.
5 E. 4. 3.
2 R. 3. fo. 12.
1 H. 7. 3.

Subject

ſubject hath any intereſt, the King may pardon and releaſe the ſame: for after that pardon, no Informer can informe tam pro Domino Rege, quam pro ſeipſo, according to the ſtatute, &c. and for himſelfe onely in a popular Action he cannot informe.

CAP. LXXXIX.

Of Foreſtalling, Ingroſſing, &c.

FOriſtel [a], Fariſtel, [b] Foriſtellum, & Foriſtellarius, derived of two Saxon words, viz. far or fare (via or iter) unde fare for a paſſage and farewell, to goe or proceed well: we have turned far to for and ſtall, which we retaine ſtill, and ſignifieth interceptionem, or [c] impedimentum tranſitus, hinderance or interception. And the offender is called Forſtellarius. See of this offender in the ancient ſtatute: [d] Nullus Forſtellarius in villa patiatur morari, qui pauperum ſit depreſſor manifeſte, & totius Communitatis, & patriæ publicus inimicus, qui bladum, piſces, allec, vel res quaſcunque venales per terram, vel per aquam venientes, quandoque per terram, quandoque per aquam obviando præ cæteris feſtinat, lucrum ſitiens vitioſum, pauperes opprimens, ditiores decipiens, qui ſic minus juſte illo qui eos apportaverit multo magis vendere machinatur. Qui mercatores exterraneos venalibus venientibus circumvenit, offerens ſe venditioni rerum ſuarum, & ſuggerit, quod bona ſua cariùs vendere poterunt, quam vendere proponebant, & ſic arte, vel ingenio villam ſeducit & patriam. Primo convictus graviter amercietur, ſecundo ſubeat judicium pilloriæ, tertio incarceretur, & redimatur, quarto abjuret villam. Et hoc judicium fiet de Forſtallariis univerſis, & ſimiliter de his qui * conſilium aut auxilium eiſdem præſtiterint vel favorem, &c. And his deſcription ſee in a latter Act. See before in the Chapter of Monopolifts.

Ingroſſator or Engroſſator, of the Engliſh & French word, groſſe, that is, great or whole, unde Merchant groſſer. a Merchant that ſelleth by great or whole-ſale. We remember not that we have read of this word [ingroſſe] in any Act of Parliament, Book Caſe, or Record, but [e] rarely, before the ſaid Act of 5 E. 6. And there is an Ingroſſer by the Common lawes, who is hereafter deſcribed. And there is an Ingroſſer by Act of Parliament, and he is deſcribed by the ſtatute of 5 E. 6. And by that Act a [f] Regrator is alſo deſcribed, who is a kind of Ingroſſer. Regrator is derived of the French word Regratement, for Huckſterp. But in ancient time both the Ingroſſor and Regrator were comprehended under Foreſtaller.

It was [g] reſolved by the Juſtices and Barons of the Exchequer upon conference betwixt them, that Salt is a victuall, and the buying and ſelling thereof was within the ſtatute of 5 E. 6. for it was not onely of neceſſity of it ſelf for the food and health of man, but it ſeaſoneth and maketh wholſome Beefe, Porke, &c. Butter, Cheeſe, &c. and other Victuals. And Peryam Juſtice ſaid, [h] Hil. 26. El. in Cõi banco, that ſo it had been lately adjudged.

[i] Mich. 6 Jac. in Scaccario, in an information by Baron againſt Boy, upon the ſtatute of 5 E. 6. cap. 14. of Ingroſſers for buying and ſelling of Apples; the defendant pleaded not guilty, and was found guilty. But the Barons gave judgment againſt the Informer, and cauſed an Entry to be made in the Margent of the Record, that the judgment was given upon matter apparent to them, that Apples were not within the ſaid Act, for that the Act is to be intended of victuall neceſſary for the food of man, the words of the Act being [Corne, Graine, Butter, Cheeſe, Fiſh, or other dead victuall] which is as much as to ſay (of other dead victuall of like quality: id eſt, of like neceſſary and common uſe.) And therefore

See the firſt part of the Inſtitutes. Sect 240. Domeſday.

a Chent. Dover. ter.

b Wirceſter. Scirropſcir Civitas.

c Fleta lib. 1. ca. 42. § foreſtall. & lib. 4. cap. 11. Britton fo. 33. a. 77. a.

d Vi. Vet. M. C. part 2. 24. b. 34 E. 1. de Piſtor. Braciatoribus & aliis victuallariis, & de Foreſtellariis, hic infra.

* 51 H. 3. Raſt. weights and meaſures. 4. 25 E. 3. c. 3. ſtat. 3. 27 E. 3. cap. 11. ſtat. ſtap. 28 E. 3. cap. 13. 5 E. 6. cap. 14. 5 Eliz. cap. 12. 13 Eliz. cap. 25.

e For the word [*Ingroſſor*,] ſee 27 E. 3. c. 5. ſtat. 1. 37 E. 3. cap. 5.

f For this word [*Regrator*] ſee 51 H. 3. weights and meaſures. 4. Raſtall. 14 R. 2. ca. 4. 8 H. 6. cap. 5. Regrators or Choppers, and in ſome countries called Jobbers.

g M. 44 & 45 El. at Serjeants Inne in Fleetſtreet.

h Hil. 26 Eliz. judgment cite p *Peryam* Juſtice

i M. 6 Jac. in Scac. Int. *Baron* & *Boy*.

therefore Apples being rather of pleaſure then neceſſity, are not within the ſaid ſtatute, no more then Plumbs, Cherries, or other fruit; and no information hath ever been exhibited for ingroſſing of Apples, Plumbs, Cherries, or other fruit: but the ſtatute of 2 E. 6. cap. 15. doth forbid conſpiracy of Coſtermongers and Fruterers, and maketh ſuch conſpiracy unlawfull. And the ſaid judgment of the Barons was affirmed in a writ of Errour in the Exchequer-Chamber.

P. 18 E. 2 Coram Rege Rot. 76. Southt'.

Venditio Braſei non eſt venditio Victualium, nec debet puniri ſicut venditio panis, vini & cerviſiæ, & hujuſmodi, contra formam ſtatuti. But the Act of 5 E. 6. hath made corne, graine, &c. to be victuall within that Act. Vide Vet. N. B. 2. part 23. b. Stat. de Piſtor, Braceator, & aliis victelariis. 34 E. 1.

Mic. 39. & 40. El. Reſolution de touts les Juſtices. * Dardanarius. An Ingroſſer by the common law deſcribed.

It was upon conference and mature deliberation reſolved by all the Juſtices, that any Merchant, Subject or Stranger, bringing victuals or merchandiſe into this Realme, may ſell them in groſſe; but that vendee cannot ſell them again in groſſe, for then he is an *Ingroſſer according to the nature of the word, for that he buy in groſſe, and ſel in groſſe, and may be indicted thereof at the Common law, as for an offence that is malum in ſe. 2. That no Merchant or any other may buy within the Realme, any victuall or other merchandiſe in groſſe, and ſell the ſame in groſſe againe, for then he is an Ingroſſer, and puniſhable, ut ſupra: For by this meanes the prices of victuals and other merchandiſe ſhall be inhaunced, to the grievance of the Subject; for the more hands they paſſe through, the dearer they grow, for every one thirſteth after gaine, vitioſum ſitiunt lucrum. And if theſe things were lawfull, a rich man might ingroſſe into his hands all a commodity, & ſell the ſame at what price he will. And every practiſe or device by act, conſpiracy, words or newes, to inhaunce the price of victuals or other merchandiſe, was puniſhable by law; and they relyed much upon the ſtatute aforeſaid, Nullus forſtallarius, &c. which ſee before in this Chapter: and that the name of an Ingroſſer in the reigne of H. 3. and E. 1. was not known, but comprehended within this word [forſtellarius] lucrum ſitiens vitioſum; and ingroſſing is a branch of foreſtalling. And for that forſtellarius was pauperum depreſſor, & totius Communitatis & patriæ publicus inimicus, he was puniſhable by the Common law.

-Lucrumq; acquirit eundo,
Nivis ut exiguus creſcit eundo globus.

3 E. 2. Action ſur leſtat. F. N. B. 250, l.

43 Aſſ. p. 38. Tit. Aſſ. 354.

They had alſo in conſideration the Book in 43 Aſſ. where it was preſented, that a Lombard did procure to promote and inhaunce the price of merchandiſe, and ſhewed how: the Lombard demanded judgment of the preſentment for two cauſes. 1. That it did not ſound in foreſtalling. 2. That of his endeavour or attempt by words, no evill was put in ure, (that is) no price was inhaunced, & non allocatur, and thereupon he pleaded not guilty: whereby it appeareth, that the attempt by words to inhaunce the price of merchandiſe was puniſhable by law, and did ſound in foreſtalment: and it appeareth by the Book that the puniſhment was by fine and ranſome. And in that caſe Knivet reported, that certaine people (and named their names) came to Coteſwold in Hereforſhire, and ſaid in deceipt of the people, that there were ſuch wars beyond the ſeas, as no Wool could paſſe or be carryed beyond ſea, whereby the price of wools was abated: and upon preſentment hereof made, they appeared; and upon their confeſſion they were put to fine and ranſome. See the ſtatute of 25 H. 8. cap. 2. whereby the Lords of the Counſell, Juſtices, &c. or any ſeven of them, &c. have power to ſet prices on victuals, and the ſame to be proclaimed under the Great Seale.

Nota, the abatement by undue meanes of the Price of our native commodities, is puniſhable by fine and ranſome. See 23. E. 3. ca. 6. 13 R. 2. cap. 8. Inter leges Ethelſtani. cap. 12.

For preventing of all ingroſſing and foreſtalling, it was the ancient law before the Conqueſt, Decrevimus porro, ne quis extra oppidum quicquam 20 Denariis carius æſtimatum emat, verum intra portum præſente oppidi præfecto, aliove viro fideli, aut ipſo denique præpoſito regio, in celebri plebis concurſu, & hominum oculis quiſque mercator.

Inter leges Will. 1 Conqueſt. fo. 125.

Interdicimus etiam ut nulli pecudes emantur niſi infra civitates, & hoc ante tres fideles teſtes, nec alia neceſſaria ſine fideijuſſore & warranto, &c. Item nullum mercatum vel feria ſit, nec fieri permittatur, niſi in civitatibus regni noſtri & in burgis, &c.

Commiſſio

Commiſſio facta fuit Roberto Hadham ad vendend' blada & alia bona diverſarum Abbathiarum alienigenarum, qui venit & cognovit, quod vendidit blada prioris de Tickford in garbis in duabus * taſſis exiſtent pro 10 li. quæ venditio facta fuit contra legem & conſuetudinem regni Angliæ, vendend' in garbis, priuſquam triturat fuerunt, quod fieri debuiſſet per menſuram poſt eorum trituracionem: Ideo committitur priſonæ, & adjudicatur, quòd ab omni officio Domini Regis amoveatur, & quòd finem faciat cum Domino Rege.

Hil. 25 E. 3. coram Rege. Rot. 13. Buck. Hadhams caſe.

* Of the French word *Taſer*, to heape in Goves or ſtacks.

Obſerve well this judgement, that it is againſt the Common law of England to ſell corne in theales before it is threſhed and meaſured: and the reaſon thereof ſeemeth to be, for that by ſuch ſale the Market in effect is foreſtalled.

See 5 E. 6. ca. 14. He is an Ingroſſer that buyes (other then by grant or leaſe of land or tithe) any corne growing in the fields, &c.

CAP. XC.

Againſt Roberdſmen.

IT is an Engliſh Proverbe; That, many men talk of Robin Hood, **that never ſhot in his Bow: and becauſe the Statutes and Records hereafter mentioned cannot well be underſtood, unleſſe it be known what this** Robin Hood **was that hath raiſed a name to theſe kind of men called** Roberdſmen, **his followers, we will deſcribe him.**

This Robert Hood **lived in the reigne of King** R. 1. **in the borders of England and Scotland, in Woods and deſerts, by robbery, burning of houſes, felony, waſte and ſpoile, and principally by and with Vagabonds, idle wanderers, night-walkers, and Drawlatches: ſo as this notable thiefe gave not only a name to theſe kind of men, but there is a Bay, called Robin Hoods Bay, in the River of in Yorkſhire. And albeit he lived in Yorkſhire, yet men of his quality took their denomination of him, and were called Roberdſmen throughout all England.**

He was, ſaith Maior Scotus, principum principes, & prædo maximus.

Againſt theſe men was the ſtatute of Winchester made in 13 E. 1. **for preventing of robbery, murders, burning of houſes, &c. Alſo the ſtatute of** 5 E. 3. **which reciting the ſtatute of Winchester, and that there had been divers manſlaughters, felonies, and robberies done in times paſt, by people that be called Roberdſmen, Waſters, and Drawlatches, and remedy provided by that Act for the arreſting of them.**

13 E. 1. Statut. de Wincheſt. ca. 1. 4. 5 H. 7. fo. 5. 5 E. 3. cap. 14.

At the Parliament holden 50 E. 3. **it was petitioned to the King that Ribands and ſturdy Beggers might be baniſhed out of every towne. The anſwer of the King in Parliament was touching Ribands; The ſtatute of Winchester and the declaration of the ſame with other * ſtatutes of Roberdſmen, and for ſuch as make themſelves Gentlemen, and men of Armes, and Archers, if they cannot ſo prove their ſelves, let them be driven to their occupation or ſervice, or to the place from whence they came.**

Rot. Parl. 50 E. 3. nu. 61.

* 5 E. 3. cap. 14. 2 H. 5. cap. 9. 8 H. 6. cap. 14. Vid. 39 Eliz. ca. 4.

It is provided by the ſtatute of 7 R. 2. **that the ſtatutes made in the time of King** Edward, **Grandfather of the King, of Roberdſmen, and Drawlatches, be firmely holden and kept, and further proviſion againſt Vagabonds wandring from place to place. See a law made in the firſt Parliament of Queen** Mary, Anno Dom. 1555. **in Scotland againſt** Robert Hood, Little John, &c.

7 R. 2. cap. 5. Vid. 39 Eliz. ca. 4.

CAP. XCI.

Of Bankrupts.

VIde in the fourth part of the Inſtitutes, Cap. The Court of the Commiſſioners of Bankrupts.

CAP. XCII.

Of Recuſants.

1 Eliz.cap.2.
23 Eliz.cap.1.
28 Eliz.cap.6.
35 Eliz.cap.1,2.
3 Jac.cap.4.
7 Jac.cap.6.
Lib.10.54.the Chancelour of Oxfords caſe.
Lib.11.56.57, &c.Dr.Foſters caſe.
Lib.5.fo.1. Caudries caſe.
Dier 3 Eliz.fo. 203.

FIrſt, the Acts of Parliament that are made againſt them are 1 Eliz.cap.2, 23 Eliz. cap. 1. 28 Eli.cap. 6.35 Eliz. cap.1, & 2.3 Jac.cap. 4. 7 Jac. ca. 6. These Acts of Parliament are interpreted and expounded by divers judgements and reſolutions heretofore given, Lib. 10. fo. 54. &c. Le caſe de Chancelour, &c. de Oxford, an expoſition of the ſtatute of 3 Jac.ca. 4. Et Lib. 11.fo. 56, 57. &c. Doctor Foſters caſe, an expoſition of all the ſaid ſtatutes. See Lib.5.fo.1. &c. Caudries caſe, See Dier 3 Eliz. fo.203. an expoſition of the ſaid Act of 1 El. concerning hearing of maſſe.

CAP. XCIII.

Of Newes, Rumours, &c.

SEE the Second part of the Inſtitutes, W. 1. cap. 33. Newes. See alſo in the fourth part of the Inſtitutes, cap. Chancery, in the Articles againſt Cardinall Woolſey, Artic. 32. Convicia, ſi iraſcaris, tua divulgas, ſpreta exoleſcunt; If you ſeek to revenge ſlanders, you publiſh them as your own; if you deſpiſe them, they vaniſh.

Tacitus.

The law before the Conqueſt was, that the author and ſpreader of falſe rumours amongſt the people had his tongue cut out, if he redeemed it not by the eſtimation of his head.

Int.leg.Alveredi cap.28.

CAP. XCIV.

Of VVeights and Meaſures.

SEE the ſecond part of the Inſtitutes, W.1. cap. 4. and the expoſition upon the ſame.

CAP.

CAP. XCV.

Of Apparell.

DIvers Acts of Parliament have been made againſt the exceſſe of Apparell in the reign of E. 3. As 11 E. 3. cap. 2. & 4. 37 E. 3. ca. 8, 9, 10, 11, 12, 13, 14. 38 E. 3. cap. 2. In the reign of E. 4. 3 E. 4. cap. 5. 22 E. 4. cap. 1. In the reign of H. 8. 1 H. 8. cap. 14. 6 H. 8. ca. 1. 7 H. 8. cap. 7. 24 H. 8. cap. 13. 33 H. 8. cap. 5. 37 H. 8. ca. 7. 1 & 2 Ph. & Mar. ca. 2. 4 & 5 Ph. & Mar. c. 2. 5 El. ca. 6. 8 El. ca. 11. 13 El. ca. 19. Some of them fighting with, and cuffing one another, ſome of them expired. But foraſmuch as thoſe that ſtood in force were obſolete, and remained but as ſnares to catch or ber men at the pleaſure of the Promooter; at the Parliament holden Anno 1 Ja. all Acts of Parliament before the time made concerning Apparell are repealed, and abrogated, and ſince that time no Act hath been made concerning Apparell, and ſo ſtandeth the law at this day. Three coſtly things there are that doe much impoveriſh the ſubjects of England, viz. Coſtly Apparell, coſtly diet, and coſtly building. The beſt meane to repreſſe coſtly Apparell, and the exceſſe thereof, is by example; for if it would pleaſe great men to ſhew good example, and to weare Apparell of the cloth and other commodities wrought within the Realm, it would beſt cure this vain, and conſuming ill, which is a branch of prodigality, and herewith few wiſemen are taken. If you will looke into the Parliament Roll of 2 H. 6. you ſhall ſee what plain and frugall Apparell that renowned King H. 5. after he was King did wear, his gown of leſſe value then 40. s.

1 Jac. R. ca. 25.

Exceſſe of Apparell is beſt cured, exemplo & virtuperio.

Rot. Parl. 2 H. 6 nu. 30.

Magna corporis cura, magna animi incuria.

Non induetur mulier veſte virile, nec vir utetur veſte fœminea: abominabilis apud deum, qui facit hoc. Deut. 22. 5.

CAP. XCVI.

Of Diet.

[a] There was an Ordinance made by King E.2. by advice of his Councell against the exceſſe of Diet, but becauſe it had not the ſtrength of an Act of Parliament, it wrought no effect.

[b] It is provided by ſtatutes made in the reigns of E.6. and Queen Elizabeth, that no fleſh ſhall be eaten on Fiſh-dayes, viz. Friday, Saturday, Embring dayes and Vigils, and the time of * Lent; [c] and for licences to eat fleſh on Fiſh-dayes, &c. See the Preamble of the Statute of 2 E.6.c.2,19.

¶ Embring dayes; ſo called, becauſe in former times when they faſted they put Aſhes or Embers on their heads. Job 2.12. Jer.6.26. 2 Sam. 13 19. And as the naturall converſion of the fleſh of the body is to duſt, ſo the ſins of the ſoul (unrepented) are turned to fire, and this was ſhadowed under Embers that ever keep fire.

* Theſe Embring dayes are the week next before Quadrageſima, ſo called, for that it is the fortieth day before Eaſter, and is the firſt Sunday in Lent. So Quinquageſima the Sunday fifty dayes before Eaſter, Sexageſima ſixty dayes before Eaſter, and Septuageſima ſeventy dayes before Eaſter.

Before theſe late Acts the eating of fleſh on Fridays was puniſhable in the Eccleſiaſticall Court, as yet it is, the juriſdiction being ſaved by the ſaid Acts.

But there is no Act of Parliament againſt exceſſe of diet, for it is known to be ſo hurtfull for mans body, and ſo obſcureth the faculties of the minde, as the underſtanding, memory, &c. as to men, ſpecially to Chriſtian men, there needed no law at all to be made, ever being mindfull of that Caveat, [d] Attendite autem vobis, ne fortè graventur corda veſtra in crapula, & ebrietate, &c.

[e] Vigilia, & cholera, & tortura viro infrunito; Somnus ſanitatis homini parco, dormiet uſque in mane, & anima illius cum ipſo delectabitur. The very all heathen men by the light of nature agree hereunto. [f] Tantum cibi & potus adhibendum eſt, ut reficiantur vires, non opprimantur.

Horace 2.Ser.2.

> Accipe tu, victus tenuis quæ, quantaque ſecum
> Afferat, imprimis valeas bene: nam variæ res
> Ut noceant homini, credas, memor illius eſcæ,
> Quæ ſimplex olim tibi ſederit: At ſimul aſſis
> Miſcueris elixa: ſimul conchylia turdis:
> Dulcia ſe in bilem vertent, ſtomachoque tumultum
> Lenta feret pituita: vides, ut pallidus omnis
> Cœna deſurgat dubia?———

Ex plenitudine generantur morbi, qui ſuperant medicorum artem.

[g] King Edgar permitting many of the Danes to inhabite here (who firſt brought into this Realm exceſſive drinking) was in the end conſtrained to make a law againſt this exceſſe (which never commeth alone) driving certain nails into the ſides of their cups, as limits, and bounds, which no man upon great pain ſhould be ſo hardy as to tranſgreſſe.

William of Malmesbury, comparing Engliſhmen and Normans together, ſaith, that in his time, the Engliſh manner was to ſit bibbing whole houres after dinner, [h] and that the Norman faſhion was to walk the ſtreets with great troops, with idle and looſe ſervingmen following them, both which were cauſes of many diſorders and outrages.

[i] If the exceſſe of drinking extend to the loathſome and odious vice of drunkennesſe, it is puniſhable by Act of Parliament. And to ſay the truth the ancient Britains were free from this crime.

Ecce

[a] Rot.Clauſ. 9 E.1.m.26.in Dorſſ.intitled *Ordinatio ſuper menſuratione ferculorum.*
[b] 2 E.6.cap 19. 5 E.6.ca.3. 5 El.ca.5. 27 El.ca.11. 35 El.ca.7.
* *Lent* 2.Saxon. *Quimreſme. Quadrageſima.*
[c] Hereof ſee the 4.part of the Inſtitutes, cap. The Court of Audience, & c. and Faculties.
* Vide Britton cap.53.and other books make mention of theſe.
[d] Luc.c. 21. v.34. Rom.ca.13.v.13. Eccleſiaſticus c1.37.v.30.31.
[e] Eccleſiaſticus 31.20.
[f] Cicero.
[g] From whence exceſſe of drinking in England came.
[h] From whence troops of idle ſervingmen came into England.
[i] 4 Jacobi c.5. See 1 Ja.ca.9. 7 Ja.ca.10. 21 Ja.c.7.an excellent law. *Una ſalus ſanis nullam potare ſalutem.*

Ecce Britannorum mos eſt laudabilis iſte,
Vt bibat arbitrio pocula quiſque ſuo.

And the laws againſt drunkenneſſe are very new.

Nothing is here ſaid againſt that great Peacemaker, and branch of liberality, orderly Hoſpitality, but againſt the dainty and diſorderly exceſſe of meats and drinks, which is a ſpecies of prodigality: for it is prohibited by Act of Parliament that the grace of Hoſpitality ſhall not be withdrawn from the needy. W.1.3 E.1 ca.1.

See the Statute of 37 E.3. ca.8. againſt exceſſive apparell and diet: but it was repealed in the next Parliament, 38 E.3.ca.2.

CAP. XCVII.

Of Buildings.

WE have not read of any Act of Parliament now in force made againſt the exceſſe of Building, or touching the order or manner of building; but it is a waſting evill, whereunto ſome wiſe men are ſubject. But the Common law doth prohibit any ſubject to build any Caſtle or houſe of ſtrength imbatteled, &c. without the Kings licence, for the danger that might enſue.[a] Alſo the Common law prohibiteth the building of any edifice to a common Nuſance, or to the Nuſance of any man in his houſe, as the ſtopping up of his light, or to any other prejudice or annoyance of him. Ædificare in tuo proprio ſolo non licet, quod alteri noceat.

[b] In Deuteronomy it is ſaid, Cum ædificaveris domum novam, facies[c] murum tecti per circuitum, ne effundatur ſanguis in domo tua, & ſis reus, labente alio, & in præceps ruente.

[d] I like well the Counſell to a Nobleman, whoſoever gave it. Si vis (ait ille) ædificare domum, inducat te neceſſitas, non voluptas; cupiditas ædificandi ædificando non tollitur; nimia & inordinata cupiditas ædificandi expectat ædificii venditionem: Turris completa, & arca evacuata faciunt tardè hominem ſapientem.

Ædificare domos multas, & paſcere multos,
Eſt ad pauperiem ſemita laxa nimis.

To build many houſes, and many to feed,
To poverty that way doth readily lead.

See the 1.part of the Inſtitutes Sect.1.fo.5.2. Vet.Mag.Cart. 1.part fo.162. cap.Eſchaetry,&c. 14 H.6.nu.7.licence to the D.of Gloc.to imbattel Greenwich.

a Li.9.f.54.& 58. Lib.5.fo.101. &c.

b Deut.22.8.

c Battelments, This was for ſafety only.

d Bernhard.conſilium.

Euripides tranſlated by Sir Th. Moor.

Of theſe three it hath been truly ſaid; Veſtium, Conviviorum, & Ædificiorum luxuria ægræ civitatis ſunt indicia, & ſpecies prodigalitatis.

But by the Common law, and generall cuſtome of the Realme, it was lawfull for Biſhops, Earls, and Barons to build Churches, or Chappels within their Sees: and hereof King John informed Pope Innocentius the third (naming only, honoris cauſa, the Biſhops and Baronage of England, albeit this liberty extended to all) with requeſt that this liberty to the Baronage might be confirmed. To theſe Letters the Pope made this anſwer, Quod enim de conſuetudine regni Anglorum procedere regia Serenitas per ſuas literas intimavit, ut liceat tam Epiſcopis, quam Comitibus, & Baronibus Eccleſias in feudo ſuo fundare, laicis quidem principibus id licere nullatenus denegamus, dummodo Dioceſani Epiſcopi eis ſuffragetur aſſenſus, & per novam ſtructuram veterum Eccleſiarum juſtitia non lædatur. Whereas the Baronage had abſolute liberty before, now the Pope addeth the conſent of the Biſhop: but that addition bound not, ſeeing it was againſt the liberty of the Baronage warranted by the Common law: and we would not have rehearſed this Epiſtle, but that it is a proof what the generall cuſtome of the Realm was concerning the building of Churches

Vide the like in the Regiſt.36.b. Prohib.de decimis ſeperatis. In Epiſt.decret. Innocent.3.l.10. pag.228.

Tr.10 E.1. Rot.13.in banco Rich.de Turnys caſe. Eborum.

ches by the Baronage of England. And albeit they might build Churches without the Kings licence, yet could they not erect a spirituall politique body to continue in succession, and capable of indowment without the Kings licence: but by the Common law before the statutes of Mortmain, they might have indowed this spirituall body once incorporated, perpetuis futuris temporibus, without any licence from the King, or any other.

And as the law is in cases of Devotion and Religion, so it is in cases of Charity: Any man may erect and build a house for an [a] Hospitall, School, Workinghouse, or house of Correction, or the like, without any licence, for that is but a preparation, and may be done as owner of the soyl; but by the Common law could not incorporate any of them without licence, but now he may, & indow them with lands in certain cases,[a] by the statutes of 39 Eliz. cap. 5. and 3 Car. ca. 1. as in the Second part of the Institutes in the exposition of those statutes it appeareth.

Concerning the building or erecting of [b] Tombs, Sepulchers or Monuments for the deceased in Church, Chancell, Common Chappell, or Churchyard in convenient manner, it is lawfull, for it is the last work of charity that can be done for the deceased, who whiles he lived was a lively Temple of the holy Ghost, with a reverend regard, and Christian hope of a joyfull resurrection. And the defacing of them is punishable by the Common law, as it appeareth in [c] the book of 9 E. 4. 14. a. And so was it agreed by the whole Court, Mich. 10 Ja. in the Common plea, between Corven and Pym. And for the defacing thereof, they that build or erect the same shall have the action during their lives, (as the Lady Wiche had in the case of 9 E. 4.) and after their deceases, the heir of the deceased shall have the action. But the building, or erecting of the Sepulcher, Tomb, or other monument ought not to be to the hindrance of the celebration of divine service. And in that case of Corven it was resolved, that albeit the freehold of the Church be in the Parson, yet if a Lord of a Manor, or any other that hath an house within the town or parish, and that he, and all those whose estate he hath in the mansion house of the manor, or other house, hath had a seat in an Isle of the Church, for him and his family only, and have repaired it at his proper charges, it shall be intended that some of his Auncestors, or of the parties whose estate he hath, did build and erect that Isle for him and his family only: and therefore if the Ordinary endeavour to remove him, or place any other there, he may have a Prohibition. [d] It was further resolved, that if any man hath a house in a town or parish, and that he and those whose estate he hath in the house, hath had time out of minde a certain Pew, or seat in the Church maintained by him and them, the Ordinary cannot remove him, (for prescription maketh certainty, the mother of quietnesse) and if he doe, a prohibition lyeth against him. [e] But where there is no prescription, there the Ordinary that hath the cure, and charge of souls, may for avoiding of contention in the Church, or Chappell, and the more quiet, and better service of God, and placing of men according to their qualities and degrees, take order for the placing of the parishioners in the Church or Chappell publique, which is dedicate and consecrate to the service of God.

Nota, Funerall expences according to the degree and quality of the deceased, are to be allowed of the goods of the deceased, before any debt or duty whatsoever, for that is opus pium, or charitativum.

Amongst the people of Almighty God, as it appeareth in the holy History, Sepulture was ever had in great reverence, not only of Kings, but of other men; as (amongst many others) good old Barzillai, when he had excused himself for not going with the King to Jerusalem, he concluded, Obsecro ut revertar servus tuus, & moriar in civitate mea, & sepeliar juxta Sepulchrum patris mei, & matris meæ, &c. 2 Sam. 19. 37.

And also the morall Heathens had building and erecting of Sepulchers, or Monuments in great account, as it doth appeare by the Seven wonders of the world, which for memory may be expressed in these few Verses.

1. Pyramides

[a] Lib. 10. fo. 27. Le case de Suttons hospitall. See the statute of 39 El. cap. 4. whereby Authority is given to Justices of Peace to build and erect houses of Correction, &c.
[a] 39 El. c. 5. 3 Car. ca. 1.
[b] *Tumba, tumulus, sepulchrum.*
[c] 9 E. 4. 14. the La. Wiches case, wife of Sir Hugh Wiche, Mich. 10. Ja. in Communi banco Int' Corven & Pym. Barth. Cassaneus fo. 13. Conclus. 29. & tio datur, siquis aliquid in aliquo loco posita delevit, seu abrasit, &c.
[d] 8 H. 7. 12. a. per Hussy accord. Pasch. 10 Jac. in curia Cam. Stellatæ Inter Hussy Plaintif, & Kath. Layton, & al' Defendants issint resolve per le Court.
[e] 8 H. 7. 12. a, acc. 12 H. 7. 12. per Hussye.

1. Pyramides Memphis, 2. Babylonis mœnia celſæ,
3. Templum ingens Epheſi virgo Diana tuum,
4. Mauſoli Cariæ monumentum, 5. Raraque Pharo
Turris, 6. Olympiaci ſplendida imago Jovis,
7. Denique apud Rhodios ſplendentis ſtatua Phœbi:
Hæc ſeptem mundus mira, viator, habet.

Beſides the religious, and Chriſtian regard aboveſaid, theſe monuments do ſerve for four good uſes and ends. First, for evidence, and proof of deſcents, and pedegrees. Secondly, what time he that is there buried deceaſed. Thirdly, for example, to follow the good, or to eſchew the evill. Fourthly, to put the living in mind of their end, for all the ſons of Adam muſt die. Statutum eſt hominibus ſemel mori.

Monumentum ſervat alicujus rei memoriam aliter interituram, eamque nobis repræſentat: and therefore a Monument is called a Memorial.

Monumentum dicitur à monendo; quicquid enim nos monet eſt monumentum, ut ſepulchrum, quòd nos ſumus mortales.

Cum tumulum cernis, tum tu mortalia ſpernis:
Eſto memor mortis, ſiſque ad cœleſtia fortis.

It is to be obſerved, that in every Sepulcher, that hath a monument, two things are to be conſidered, viz. the monument, and the ſepulture or buriall of the dead. * The buriall of the Cadaver (that is, caro data vermibus) is nullius in bonis, and belongs to Eccleſiaſticall cogniſance, but as to the monument, action is given (as hath been ſaid) at the Common law for defacing thereof. * Britton fo. 84. b.

In the year of our Lord 1586. and in the 28 year of the reign of that glorious Queen Elizabeth, was the old gate called Ludgate in the City of London (as Stow ſaith) taken down to be new builded: There was found couched within the old wall thereof a ſtone, wherein was graven in the Hebrew tongue and Characters, an Epitaph, ſignifying in Engliſh: This is the Tomb of Rabbi Moſes ſon of the illuſtrious Rabbi Iſaac: which certainly was before the 23 year of the reign of H. 2. Anno Domini 1177. for before that time all the Jews in England were buried within the City of London, and in that year, ſaith Hovenden, Dominus rex pater dedit licentiam Judæis terræ ſuæ habendi cœmeterium in qualibet civitate Angliæ, extra muros civitatum, ubi poſſunt rationabiliter, & in competenti loco emere, ad ſepeliend' mortuos ſuos: prius enim omnes Judæi mortui Londoniâ ferebantur ſepeliendi. Stow in his Survey of London, fo. 19. * For ſo is the truth. Ro. Hovenden Anno Dom. 1177. Holl. eodem An. fo. 101. b. 20.

And albeit Churches or Chappels may be built by any of the Kings ſubjects, (as hath been ſaid) without licence, yet before the law take knowledge of them to be Churches or Chappels, the Biſhop is to conſecrate or dedicate the ſame: and this is the reaſon, that a Church or not a Church, a Chappell, or not a Chappell, ſhall be tryed, and certified by the Biſhop. 8 H. 6 32. 37.

See for this dedication or conſecration the 43 chapter of Ezechiel, the 23. chapter of Geneſis, the 90 Pſalme, the 24. 26, 27. 84. and 134. Pſalms, the 2 of Samuel 6, 10 of Saint John, verſ. 22. to the end.

Vide inter leges Edwardi Confeſſoris cap. 3. Similiter ad dedicationes, ad Synodos, & ad Capitula venientibus, &c. in eundo, & redeundo ſit ſumma pax.

We find in ancient times that Vaults, hollow places, or ſubſtructions under the ground were made by men for receits, or receptacles for keeping of their wives, children, money, and goods ſecret, to avoide violence, and rapine in time of hoſtility or rebellion, and we find no law againſt them. De ſubterraneis ſubſtructionibus, & cryptis.

Theſe kind of buildings we had from the Germans, as we find it in Tacitus, who treating of the old Germans, ſaith, Solent & ſubterraneos ſpecus aperire, & ſi quando hoſtis advenit, aperta populatur, abdita autem & defoſſa aut ignorantur, aut eo ipſo fallunt, quod quærenda ſunt. They uſe to build Vaults under the earth, and if the enemy come, he deſtroyeth all open and above ground, but ſuch things as lie hidden in the cave, either they lie unknown, or at leaſt they deceive him, in that he is enforced to find them out. Neither have we found Tacitus.

any

any licence of the King to make them, nor punishment of any that made them without licence, and yet many have been made by many subjects, some whereof * we have seen.

* In the manor of Minster Lovel in Com' Oxon' &c.

a Camden Linc. pag. 406.

a We read of Alexander Bishop of Lincoln, in the reign of H. 1. and King Stephen, a Norman born, who was, insanis substructionibus ad insaniam delectatus.

b See the statute of 8 El. ca. 13. and the Letters Patents of the Lord Admirall.

b No person can build or erect Light-houses, Pharos, Sea-marks or Beacons without lawfull warrant and authority.

Lumina noctivagæ tollit Pharus æmula Lunæ.
In Light-house top is rear'd the light,
As high as the moon that walkes by night.

c 4 H. 8. ca. 1.

d De propugnaculis, munimentis, munitoriis, &c. of Bulwarks, Barbicanes, Block-houses, Piles, &c.

c Provision was made by authority of Parliament for building and erecting Blockhouses Bulwarks, Piles, and the like, for without Parliament subjects cannot be charged with building d or erecting of them, and that Act is expired.

e 13 E. 1. ca. 46. 32 Ass. 5. 7 H. 4. 39.

f 7 El. Dier 240.

e The Lord of the soil may build a Windmill Sheepcote, Dairy enlarging of a court necessary, or a curtilage in grounds, where men have common of pasture.

f A man cannot erect any building upon his own ground in the Kings Forest, but it is a purpresture, and may either be demolished or arrented to the Kings use, &c. at a Justice Seat.

Concerning houses of husbandry and tillage, the statutes of 4 H. 7. cap. 19. 7 H. 8. ca. 1, 27 H. 8, ca, 22. 5 E. 6. ca. 5. 5 El. cap. 2. are repealed by the statute of 21 Jac. cap. 28. and the statutes of 39 El. cap. 1, & 2. are expired, for that they were so like Labyrinthes, with such intricate windings and turnings, as little or no fruit proceeded of them.

g See the 2. pt of the Institutes. W. 2 ca. 24. Lib. 5. fo. 101. Lib. 8. fo. 46. Lib. 9. fo. 54. 58.

g No man can erect an house or building to the Nusance of any other.

h See lib. 4. f. 84. Lutterels case, & the authorities there cited.

h See where a man hath any house or mill, &c. and having any priviledge or thing appurtenant thereunto, and pull it down and build a new, where the privilege or appurtenant remain, and where not.

i 31 Eliz. ca. 7.

i Concerning the erecting, &c. of Cotages, see the statute of 31 El. cap. 7. which could not be restrained in such sort as they are, but by authority of Parliament.

There was a statute made Anno 35 El. (when I was Speaker) against buildings in the Cities of London, or Westminster, or within three miles of the gates of the City of London, and against the dividing & converting of any dwelling house or building into divers habitations, and against Inmates, but that endured but for seven years, and untill the end of the next Session of Parliament, which Act, being holden dangerous, was not continued at the Session of Parliament holden in 43 Eliz. being the next Session after the seven years, and therefore expired with the same. In the mean time there was a law made against new buildings, &c. which then was a warrant, and since hath been a colour for divers proceedings in Courts of Justice, not observing the expiration of that law; but now that law hath long since lost his force, and the ancient and fundamentall Common law is to be followed.

Lamb. Perambulation of Kent. These words, you shall read in Records concerning priviledges.

Sylliva, or Sulliva is a word derived from the Saxon Sylle, and signifieth a poste, or plate fixed in the ground: the Saxon word is not yet out of use, for every man knows what a groundsille is.

Pera, a Peer, derived from the Latin word Petra: Plance, of the English word Planks, for boords or tables, in use also at this day.

Having spoken of erecting of houses and buildings, &c. we will tell you what we finde in our Books and Records of Dilapidation, and decay of buildings.

k 29 E. 3. 16. 2 H. 4. f. 3. 9 E. 4. 34. l 4 H. 4. ca. 2. Lib. 11. fo. 29. Alex. Poulters case.

k Dilapidation of Ecclesiasticall Palaces, houses and buildings is a good cause of deprivation.

l It appeareth by the statute of 4 H. 4. cap. 2. that Depopulatores agrorum were great offenders by the ancient law, and that the Appeal or Indictment thereof ought not to be generall, but in speciall manner; and provides, that the offenders therein might have their Clergy. They are called Depopulatores agrorum, for that by prostrating or decaying of the houses of habitation of the Kings people, they depopulate, that is, dispeople the towns.

Prohibitio

Prohibitio Regis quod Incolæ de villa de Southampton non proſternent domos ſuas in alias migraturi regiones. Dorſ. Clauſ. An. 43 E. 3. m 23.

Simile pro magna Jermenutha. Rot. Clauſ. Anno 21 R. 2. m. 15.

That which may lawfully be prohibited before it be done, may be juſtly puniſhed after it be done.

And herewith we will cloſe up this Chapter: that the law doth favour the ſupportation of houſes of habitation, and uſe for mankinde. Firſt part of the Inſtitutes, l. 54. b. 56. b.

CAP. XCVIII.

De Lupanaribus & Fornicibus, &c.

Brothel-houſes, Eſtuis, Bordelloes.

The keeping of them is againſt the law of God, on which the Common law of England in that caſe is grounded. *Non offeres mercedem proſtibuli, nec precium canis in domo Dei tui, &c. Quia abominatio eſt utrumq; apud Dominum Deum tuum. Numb. 25. 9. Deut. 23. 18. Ezek. 16. 24. 31. 39. Joel. 3. 3. 2 Mach. 4. 12. Hoſpes meretricū Lena, Leno, unde Lenocinium.

And the keeper, he or ſhe, of ſuch houſes is puniſhable by indictment at the common law by fine and impriſonment: for although adultery and fornication be puniſhable by the Eccleſiaſticall law, yet the keeping of a houſe of Bawdry or Stewes, or Brothel-houſe being as it were a common nuſance, is puniſhable by the Common law, and is the cauſe of many miſchiefs, not onely to the overthrow of the bodies and waſting of their livelihoods, but to the indangering of their ſoules. For the miſchiefs enſuing thereupon, ſee 11 H. 6. cap. 1. 1 H. 7. f. 6. 12. 13 H. 7. 6. 27 H. 8. Rot. Parl. 14 R. 2. nu. 32.

King H. 8. ſuppreſſed all the Stews or Brothel-houſes, which long had continued on the Bankſide in Southwark, for that they were (as hath been ſaid) prohibited by the law of God, and by the law of this land. And thoſe infamous women were not buried in Chriſtian buriall when they were dead, nor permitted to receive the rites of the Church whileſt they lived. *By Proclamation under the Great Seale 30 Martii. 37 H. 8.

The word Eſtuis or Stewes is French, we having no Engliſh word for it.

Before the reign of H. 7. there were eighteen of theſe infamous houſes, and H. 7. for a time forbad them: but afterwards twelve onely were permitted, and had ſignes painted on their wals; as a Boares head, the Croſſe keyes, the Gun, the Caſtle, the Crane, the Cardinals hat, the Bell, the Swan, &c. Fabian. Chron. Stowe.

Many wicked and common women had ſeated themſelves in a lane called Water lane, next to the houſe of the Friers Carmelites in Fleet ſtreet: this being an open and known wickednelle, King E. 3. to the end theſe Friers might performe their Vowes, one of which was, to live in perpetuall chaſtity, took order for removing of theſe women. The Record ſaith, Rex præcipit Majori Civitatis London quod amoveri faciat omnes mulieres meretrices in venella prope Fratres Carmelitarum in Fleteſtreet inhabitantes. In Dorſ. Clauſ. 21. E. 3. part 1. m. 6. Fratres beatæ Mariæ de Monte Carmeli, called White Fryers.

Read 3 Regum cap. 14. verſe 24. eodem lib. cap. 15. verſe 12. & 4 Regum cap. 23. verſe 7.

And by the common law it appertaineth to the Marſhall of the Kings Houſe to free, or protect the Court from Femes puteins, **which is more particularly explained by** Fleta, **who ſaith,** Mareſchalli intereſt virgatam à meretricibus omnib. protegere & deliberare, & habet mareſchallus ex conſuetudine pro qualibet meretrice cōi infra metas hoſpitii inventa 4d primo die; quæ ſi iterum in baliva ſua inveniatur, capiatur & coram Seneſchallo inhibeatur ei hoſpitium Regis, Reginæ, & liberorum ſuorum, ne iterum ingrediatur, & nomina earum imbrevientur: 7 E. 3. fo. 23, 24. Fleta lib. 2. cap. 5. Lib. 10. Le caſe de Marſhalſea. fo. 77.

quæ ſi iterum inventæ fuerint hoſpic' ſequutrices, tunc aut remaneant in priſona in vinculis, aut ſponte prædict' hoſpicia abjurentur; quæ ſi autem tertio inventæ fuerint, conſiderabitur quod amputetur eis treſſoria, & tondeantur; quæ quidem ſi quarto inveniantur, amputentur eis ſuperlabia, ne de cætero concupiſcantur ad libidinem.

Rot. Par. 14 R. 2. nu. 32.

14 R. 2. **It is enacted that no Eſtews or Brothel-houſes ſhould be kept in Southwark, but in the Common places thereforе appointed.**

35 H. 6. Barre 162

So odious and ſo dangerous was this infamous vice (the faireſt end whereof is beggery) that men in making of Leaſes of their houſes did adde an expreſſe condition, that the leſſee, &c. ſhould not ſuffer, harbour, or keep any Feme puteine **within the ſaid houſes, &c.**

1 H. 7. fo. 6. &c.

See the caſe of 1 H. 7. **the cuſtome of London for entring into an houſe, and arreſting of an Advowtrer; and carrying her to priſon. In ancient times adultery and fornication were puniſhed by fine and impriſonment, and inquirable in Turnes and Leets by the name of Letherwite. We find in Domesday** De adulterio vero per totum Chent', habet Rex hominem (*i.* amerciamentum hominis) & Archiepiſcopus mulierem, (*i.* amerciamentum mulieris) &c.

Domeſday. Chent. Dover.

Vidua, ſi alicui ſe non legitime commiſceb. 20. s. emendabit, puella vero 10. s. pro conſimili cauſa.

Ibid. Ceſtriæ civitas.

Adulterium faciens 8 s. & 4. d. emendabit homo, & fœmina tantundem. Rex habet hominem adulterum, Archiepiſcopus fœminam.

Ibid. Sudſex Lewes. Domeſday.

But now theſe offences belong to the Eccleſiaſticall Court.

Hundredoieſc. Bracton. Fleta. Raſtall term. leg. Stat. de expoſit. vocab.

Legrewita, or Logrewita, Legergeld, or Logergeld, of Legre or Logre **for a bed and** Wite amerciament, **by common ſpeech** Letherwite or Laierwite, Lierwite, Lotherwite.

Childewite **is for the Lord to take a fine for his bondwoman defiled and begotten with childe.**

Bawdry, Lenocinium, unde Ribawdry & Ribaude. *i.* Impudicus rabula. **See Parliam. 50 E. 3. nu. 61. of Ribauds and Robertſmen.**

CAP

CAP. XCIX.

De Aſſentatione, Fucologia, Pſeudologia, Flattery.

We find a law before the conquest against flatterers in these words, Licceþaſſ Leoȝoþaſ þeþeþaſ þneapaþaſ ȝoðeſ ȝnaman habban, &c. which Mr. Lambard translateth thus, Aſſentatores, mendaces, prædones, & rapaces offenſionem Dei graviſſimam incurrant, &c. The ancient manuſcript translateth it thus, Seductores, mendaces, rapaces & raptores Dei gravamen habeant. And both translations doe in effect agree, for a flatterer is a ſeducer for ſome private end, by fained praiſe and humouring of another, whereby he hath an oultreguidance of himſelfe, his ſtate and actions, Iſti ducunt & ſeducunt.

Int. leges Canuti, fo. 106. c. 7. Lam. Fœdis magnarũ poteſtarũ peſtis, adulatio. Semper aſſentor id, quod is ad cujus voluntatem dicitur, eſſe magnum; ut in Terentio: magnas vero agere ei gratias mihi, &c. ſatis erat reſpondiſſe magnas, ingentes inquit.

The occaſion of making this law was, that King Canutus had been ſeduced by flatterers, who had ſhewed him his face and ſtate in a falſe glaſſe, making too great a ſhew of his own parts, actions, and ſtate, to the end to make him conceit himſelfe to be better and greater then he was, and his adverſaries leſſe then in truth they were. Nay, this King by wicked flatterers aſſumed to him Divine power and honour: for coming from ſea, he ſet his feet on the ſea ſtrond, as the ſea was flowing, and commanded the ſea not to riſe to wet his Lordly and Majeſtick feet nor clothes: The ſea keeping on his accuſtomed courſe, both wet his feet and thighs alſo: whereat being ſore amazed repented his preſumption (which he had undertaken by wicked flattery.)

And well is the flatterer marſhalled in this law with lyers, thiefes, & raveners, for the Divine deſcribed flatterers to be thoſe, Qui colunt aliquem, & auferunt ab eo aliquid temporarii boni. So as it is peccatum viſcatum, it getteth away much and giveth ſmoke.

And the Holy Ghoſt hath ſtyled flattery oleum peccatoris, that is, the oile of the ſinner, κατ' ἐξοχὴν, that is, of him that exceedeth others in ſinne, and doth affect greatneſſe: that is, the head, making it greater and more proſperous then it is, as you may reade in the Prophet David: Corripiet me juſtus in miſericordia & increpabit me, oleum autem peccatoris non impinguet caput meum. Whereby he being both a King and a Prophet, preferreth the reproofe, nay the ſharpe rebuke of the juſt and vertuous, before the ſmooth humouring of the flatterer (per nomen) of the ſinner. This oleum peccatoris is mel venenatum, & venenum mellitum, and commonly affecteth greatneſſe, and is called Lordbane. Pſal. 141. 5.

And againe, David ſpeaking of the flatterer ſaith, His words are ſmoother then oile, and yet are they very ſwords. Hæc dicit Dominus Deus, Væ qui conſuunt pulvillos ſub omni cubito manus, & faciunt cervicalia ſub capite univerſæ ætatis ad capiend' animas, &c. Thus ſaith the Lord God, Woe to them that ſow pillowes under all armeholes, and put kerchifes upon the heads of every age to hunt ſoules (They make the King glad with their wickednes, and the Princes with their lyes. In malitia ſua lætificaverunt regem, & in mendaciis ſuis principes. Pſal. 55. 22. Ezek. 13. 18. Oſee. 7. 3.

The flattering mouth worketh ruine. And more Kings and Kingdomes have been overthrown by the meanes of flattery, then by publike hoſtility. And this is the cauſe that we have mentioned the ſaid ancient law for their puniſhment, they be lawfully banished from Princes Courts, and Subjects houſes. Prov. 26. 28. Qu. Curtius.

Ut videat, cæco ſit ſimia præda leoni:
Rex cæcus cernit, cum ſycophanta perit.

Nota, enemies to lawes punished by the lawes.

What fearefull ends flattering favourites, corrupters of their Soveraigne Liege Lords, abusing their favours in subversion of their lawes, have had, appeareth in our Parliament Rolls, Records, and Histories.

[a] King H. 3. had Hubert de Burgo Chief Justice and Earle of Kent, and many others: but this was his safety, that upon just occasion without any great griefe he could forgoe a Favourite. See in the Preface to the second part of the Institutes, his counsell to H. 3. to burne Magna Carta.

E. 2. had [d] Pierce de Gaveston, the [c] Spencers, &c. and the Spencers proceedings against le grand Charter by name (amongst other things) tending to the subversion of law, &c.

R. 2, had Sir Robert Tresilian Chief Justice, &c. and Robert Earle of Oxford and Duke of Ireland, &c.

H. 6. had [e] William de la Pole Duke of Suffolk, &c. who endeavoured to have brought in the Civill lawes, which was the occasion that the Chief Justice Fortescue wrote in the commendation of the laws of England, preferring them for the government of this land before the Civill laws. This Duke with others plotted the death and destruction of Humfrey the good Duke of Glouc. who ever stood in his way.

E. 4. had [f] William Lord Hastings the Kings Chamberlaine, and Captaine of Callice. All these came to fearfull and untimely ends.

R. 3. had [g] Sir Iohn Catesby one of the Justices of the Common Pleas, and Henry Duke of Buck. &c. privy plotters and counsellors with R. 3. for the most execrable murder of his Nephews, E. 5. and Richard Duke of York. What a miserable end the Duke had, you know: and Justice Catesby in his Journey to London, in the Kings high way had subitaneam & improvisam mortem.

H. 7. had [h] Sir Richard Empson, Edmund Dudley, &c. Sir Richard Empson was indicted, Quod ipse consiliarius excellentissimi principis Henrici nuper Regis Angliæ septimi deum præ oculis non habens, sed ut filius diabolicus subtiliter imaginans honorem, dignitatem, & prosperitatem dicti nuper regis, ac posteritatem regni sui Angliæ minime valere, sed ut ipse magis singulares favores dicti nuper Regis adhibere, unde magnat' fieri potuisset, ac totum regnum Angliæ secundum ejus voluntatem gubernare, falso, deceptive, & proditorie legem Angliæ subvertens, diversos ligeos ipsius nuper regis, ex sua falsa covina, & subtili ingenio, contra communē legē regni Angliæ de diversis feloniis, &c. indictari fecit, &c. per quod plures & diversi populi dicti nuper Regis hiis gravaminibus, & indebitis exactionib. multipliciter torquebantur, in tantum quod populi dicti nuper regis versus ipsum nuper regem multipliciter murmurabant, & malignabant in magnum periculum ipsius nuper regis regni sui Angliæ, ac subversionem legum & consuetudinum ejusdem regni, &c. And the like indictment was against Dudley.

Tr. 23 H. 8. coram rege. Rot. 14.

H. 8. had Thomas Woolsey Cardinall. Ipse intendens finaliter antiquissimas Angliæ leges penitus subvertere, & enervare, universumq; hoc regnum Angliæ & ejusdem regni populum legibus Imperialibus, vulgo dict', Legibus Civilibus, & earundem legum Canonibus subjugare & subducere, &c.

We will for some causes descend no lower: Qui eorum vestigiis insistunt, eorum exitus perhorrescant.

But that right be done to him, who was a faithfull favorite and counsellor to this King, we have seen a Manuscript that relateth, that Charles Brandon Duke of Suffolk a wise and warlike person, was for many years before his decease, the greatest favorite the King had, upon whom he chiefly relyed in all his weightiest affairs. This noble Duke deceased in August in the 37 year of the reign of King H. 8. After whose death the next time the King sat with his Counsell, and missing the good Duke, grievously lamented for him, and said, that when I was offended with any (as often I was) and acquainted him therewith, that he ever indeavoured to mitigate my displeasure, and never spake to me evill of any of them. And the King looking upon the Lords of his Counsell one after another, said, and so (my Lord) cannot you say, perusing them all throughout. A royal commendation of this great Duke, and a great argument of his piety and honour, that

that no ſubject had ever the indignation or diſpleaſure of his Soveraign, by any private whiſpering of his.

We will conclude this chapter with one of our own Hiſtories. Generaliter cunctorum habitatorum terræ peccatis incluſive ordines ſumendo Mendicantium ad cumulandum cauſas malorum, &c. iſti poſſeſſionatis invidentes, procerum crimina approbantes, commune vulgus in errore foventes, & utrorumque peccata comedentes, pro poſſeſſionibus acquirendis, qui poſſeſſiones renunciaverant pro pecuniis congregandis: qui in paupertate perſeverare juraverant, dicunt bonum malum, & malum bonum, ſeducentes Principes adulationibus, plebem mendaciis, & utroſque ſecum in devium pertrahentes, &c. Note what is ſaid, that the full heap of the cauſes of Gods vengeance in thoſe dates, was made up be thoſe flattering preaching Friers. But Parliaments, Palaces of Princes and Pulpits ſhould be free from adulation and flattery.

Anno 5 R. 2. Th. Walſ. p. 281.

Read the ſtory, and ſee the moſt lamentable eſtate of thoſe times. Note theſe three PPP.

CAP. C.

Of falſe Impriſonment.

SEE the Second part of the Inſtitutes, the ſtatute De 1 E. 2. de frangentibus priſonam, and the expoſition upon the ſame.

See the Petition of Right, 3 Car. Regis, and Mag. Cart. ca. 29. And it is to be obſerved that before the Conqueſt it was thus provided. Qui hominem Paganum immerentem vinculis conſtrinxerit, 10 ſolidis noxiam ſarcito; eum ſi verberibus affecerit, 20 ſolidorum pœna eſto; ſi ſuſpenſum in ſublime rapuerit, 30 ſolidis culpa penſator; ſi contumelioſe capillum ejus morionis in morem totonderit, 10 ſolid' præſtato; ſin caput in morem ſacerdotis raſerit, nec ipſum ligaverit, 30 ſolidos numerato; ſi barbam illi reſecarit, 20 ſolidorum compenſatio ſequitor; ſi denique ei vinculis conſtricto capillos in morem ſacerdotum abraſerit, 60 ſolidos pendito.

Int. leges Alvredi cap. 31.

By way of addition, here it is neceſſary to be known, how and by what means one that is in priſon may be diſcharged. Every man that is in priſon, either is impriſoned without lawfull Mittimus (whereof we have ſpoken before ubi ſupra, and how he may be freed from impriſonment in that caſe) or with lawfull Mittimus. He that is lawfully impriſoned, is either impriſoned by lawfull commandement, and order or warrant, or by the Kings writ: By commandment and order of any Court of Record; and this commandement, warrant or writ is either for cauſes not being treaſon or felony, miſpriſion of the ſame, nor other publike offence or cauſe, or inferiour cauſes to theſe: as contempts, private actions or ſuits. If any Court of Record commit a man for a contempt done in Court, they may diſcharge him by like order at their pleaſure: but if they having authority, doe commit him for treaſon, felony, or other crime, or for ſuſpition of the ſame, they cannot diſcharge him untill he be inquired of, and either indicted and acquited, or an ignoramus found, and delivered by proclamation. [a] And ſo it is if any be taken and impriſoned by lawfull warrant, or the Kings writ for treaſon, felony, or other crime, &c. he cannot be diſcharged by any without legall proceeding (but by the King onely.)

[a] For bailment, See the ſtatute of Mag. Cart. ca. 29. W. 2. ca. 15. and the expoſition thereof. 1 & 2 Ph. & Mar. ca. 13. 2 & 3 Ph. & Mar. cap. 10. *b* 14 H. 6. 8. F. N. B. 167. b. See 12 H. 6. 3. *c* Mich. 13 Jac. in banke le Roy. Int. Withers & Herly, adjudge accord. 27 H. 8. 28. b. 1 R. 2. ca. 12. 10 H. 7. 3. a. per Vavaſor. 13 E. 3. Bar. 255.

[b] If a Vagrant, refuſing to ſerve, had been committed to priſon upon the ſtatute of 23 E. 3. of Labourers by the Lord of the town, or Juſtice of Peace, they might have diſcharged him, even as the Chancellour, &c. may commit a man for a contempt before him in Court, and diſcharge him again at his pleaſure.

[c] If a man be taken by the Kings Writ in an action of debt or another private action, the Plaintif may diſcharge the Gaoler of him and ſet him at liberty, though he be in execution: but if he be taken in an Appeal of Death, Robbery Rape,

Rape, &c. the Plaintif cannot diſcharge him, becauſe it is a publike offence wherein the King hath an intereſt, and he may after Nonſuit by the Plaintif be arraigned at the Kings ſuit.

There are two great adverſaries to the due execution of theſe laws (as before hath been touched) eſpecially in criminall cauſes, viz. Præcipitatio & moroſa cunctatio. Precipitation; as a man or woman to be committed to priſon, and within ſo ſhort a time to be indicted and arraigned, as it is not poſſible for them to ſend for, or procure their witneſſes; this certainely is precipitation, for the law both in perſonall and reall actions doth give the party, Tenant or Defendant a convenient time without reſpect of perſons to anſwer, &c. much more it ought to be in caſe of life, Nec unquam in judiciis tantum eminet periculum, quantum parit proceſſus feſtinatus: and again, Crebro in deliberationibus judicia matureſcunt, in accelerato proceſſu nunquam: and ſpecially in caſe of life. As for moroſa cunctatio, froward or wayward delay; ſee the Second part of the Inſtitutes Glouc. ca. 26. And we will conclude this chapter with the rule of law, Quod in criminalibus, probationes debent eſſe luce clariores.

Forteſcue ca. 53. fo. 127. b.

CAP. CI.

Of Judgments and Execution.

IUdicium is derived à Jure, & dicto, & eſt quaſi Juris dictum, and therefore if the judgment be erroneous, both the judgment and execution thereupon, and all the former proceedings ſhall be reverſed by writ of Error: but if the former proceeding and judgment be good, if the execution be erroneous, the execution ſhall onely be reverſed: and becauſe the judgment is the guide and direction of the execution, we ſhall treat principally of the Judgment, and incidently of Execution.

Of Judgements, ſome be by the Common law, and ſome by Statute law, and ſome by Cuſtome.

Of Judgments by the Common law, ſome be in criminall cauſes, or Pleas of the Crown, concerning the life of man (whereof we are principally to intreat,) and of theſe ſome be expreſſed, and ſome implyed. Other judgments at the Common law be in actions reall and mixt, of which ſome be Judicia interlocutoria, and ſome ultima ſeu principalia: and again, de principalibus, quædam ſunt finalia, & quædam non ſunt finalia. Of Judgments by ſtatutes, ſome be in criminall cauſes, and ſome in Common pleas: but Judgments by cuſtome are onely in Common pleas.

All Pleas of the Crown, concerning the life of man, are divided into treaſon and felony: and treaſon into High treaſon and Petit treaſon, and felony into all the ſeverall branches aboveſaid. And as in the caſe of High treaſon, (as it hath before appeared) ſome be far more horrible & odious then other, yet (one caſe excepted as before hath appeared) one & the ſame Judgment is given for all. So in caſes of Petit treaſon, one judgement is given in all, nay in all the ſeverall caſes of felony, though ſome be far more haynous then other, yet all being but felony, one and the ſame judgment is given. See the judgment and forfeiture in caſes of treaſon, felony, &c. in the ſeverall titles thereof, theſe we will add.

6 El. Dier. 230. See before in the chapter of treaſon.

Iudgment in High Treaſon.

Et ſuper hoc viſis, & per curiam hic intellectis omnibus & ſingulis præmiſſis, * conſideratum eſt, quod prædictus R. uſque furcas de T. 1 trahatur, & 2 ibidem ſuſpendatur per collum, & vivus ad terram proſternatur, & 3 interiora ſua extra

Pl. Com. 387. b. See Stanford 182. d. e. Lib. Int. Co. 361.

* See the book of Judges cap. 19. ver. ult. Conſider, Conſult, and give ſentence. 19 H. 6. 47. Trahe, pende, & diſcloſe. Bract. li. 3. fo. 118. b. *Crimen læſæ majeſt. ut ſi contra perſonam ipſius regis ſit præſumptum, quod quidem crimen omnia alia crimina excedit quoad pœnam.* Idem l. 3. fo. 104. b. maketh mention of execution, *laqueo & ſuſpendio*, Parliam. 21 R. 2. inter placita Coron. nu. 50.

ventrem

ventrem ſuum capiantur, ipſoque vivente comburantur, & 5 caput ſuum amputetur, quodque 6 corpus ſuum in quatuor partes dividatur, ac 7 quod caput & quarteria illa ponantur, ubi dominus rex ea aſſignare vult.

Implyed in this judgment is, Firſt, the forfeiture of all his Goods, Lands, Tenements and Hereditaments in fee-ſimple, or fee-tail, of whomſoever they be holden. Secondly, his wife to loſe her Dower. Thirdly, he ſhall loſe his children (for they become baſe and ignoble.) Fourthly, he ſhall loſe his poſterity, for his blood is ſtained and corrupted, and they cannot inherit to him, or any other Anceſtor. Fifthly, all his goods and chattels, &c. and reaſon is, that his body, lands, goods, poſterity, &c ſhould be torn, pulled aſunder, and deſtroyed, that intended to tear and deſtroy the Majeſty of government. And all theſe ſeverall puniſhments are found for treaſon in holy Scripture. 35 H.8. Br. Forfeiture. 99.

1 Reg. 2. 28. &c. Joab tractus, &c. Drawing.

Eſther 2. 22, 23. Bithan ſuſpenſus, &c.

Acts 1. 18. Judas ſuſpenſus crepuit medius, & diffuſa ſunt viſcera ejus. Hanging Bowelling.

2 Sam. 18. 14, 15. Infixit tres lanceas in corde Abſolon cum adhuc palpitaret, &c. The heart, &c. while he lived.

2 Sam. 20. 22. Abſciſſum caput Sheba filii Bichri. Beheaded.

2 Sam. 4. 11. 12. Interfecerunt Baanan & Rechab, & ſuſpenderunt manus & pedes eorum ſuper piſcinam in Hebron. Quarters hanged up.

Corruption of blood, and that the children of a Traitor ſhould not inherit, appeareth alſo by holy Scripture. Damnatæ memoriæ.

Pſal. 109. 9, 10, 11, 12, 13. Mutantes transferantur filii ejus, & mendicent, & ejiciantur de habitationibus ſuis, & diripient alieni labores ejus, & diſpereat de terra memoria ejus.

[a] The judgment of a woman for High treaſon is to be drawn and burnt. *a* 25 E. 3. 42. b. Coron. 130. Brit. ca. 8. f. 16. b. accord.

[b] Sir Andrew Harkley Earl of Carliſle, convicted, degraded and attainted of treaſon. *b Degradation.* Hil. 18 E. 2. Coram Rege Rot. 34, 35. Walſingh. p. 118.

Iudgment in Petit treaſon, where he is convicted thereof by verdict or confeſſion.

Super hoc viſis, &c. ut ſupra, Conſideratum eſt, quod prædictus R. uſque furcas de T. trahatur & ibidem ſuſpendatur per Collum, quouſque mortuus fuerit. 19 H. 6. 47. Com. Cæſar. ante Chriſtum natum 1600 annis, what the Judgment was for Petit treaſon. 1 R. 3. f. 4. 25 E. 3. 42. 12 Aſſ. 30. 6 E. 4. 4. a & b.

But a woman is to have judgment to be drawn and burnt as well in caſe of Petit treaſon, as High treaſon, and ought not to be beheaded or hanged. De morte mariti ſi compertum eſt uxorem, &c. igne Britanni interficiunt.

Bracton li. 3. fo. 105. a. Igne concremantur qui ſaluti dominorum ſuorum inſidiaverint, idem fo. 104. b.

Iudgment in felony, where he is convicted thereof by verdict or confeſſion.

Et ſuper hoc viſis, &c. ut ſupra, Conſideratum eſt quod prædictus R. ſuſpendatur per collum, quouſque mortuus fuerit. Bracton lib. 3. fo. 104. b. ſpeaketh, De laqueo. See the Preface to the ſixth part of Reports, what the law was before the Conqueſt Anno Dom. 995. in caſe of felony.

And it is a maxime in law, that execution muſt be according to the judgement, Ea quæ in curia noſtra rite acta ſunt, debit' executioni demandari debent: * and for expreſſe authority, non licet felonem pro felonia decollare; and yet ſome examples are to the contrary. * Paſch. 20 R. 2. Coram Rege Rot. 1. Lincoln.

True it is that the Lord of Hungerford of Heytesbury was in 32 H. 8. attainted of Buggery, and had judgment to be hanged by the neck, untill he was dead; and yet on the twenty eight day of July in the ſame yeer was beheaded at the Tower hill. But as true it is, that Thomas Fines Lord Dacres of the South, in anno 33 H. 8. was attainted of murder, and had judgment to be hanged by the neck untill he was dead, and according to the judgment was hanged at Tiborn the twenty eight of June in the ſame yeer. And true it is that Edward Duke of Somerſet was attainted of felony in anno 5 E. 6. and had judgment to be hanged by the neck untill he was dead, and on the twenty ſe- See before cap. Murder.

cond

cond of Februarij in the ſame yeer was beheaded at the Tower hill. And as true it is, that 3 & 4 Ph. and Mar. the Lord Stourton was attainted of murder, and had judgment to be hanged by the neck, untill he were dead, and according to the judgment, the firſt of March in the ſame yeer was hanged.

In caſe of High treaſon, beheading is part of the judgment, and therefore the King may pardon all the reſt ſaving beheading, as is uſually done in caſe of Nobility. But if a man being attainted of felony, be beheaded, it is no execution of the judgment, becauſe the judgment is, that he be hanged, untill he bee dead. In this caſe the judgment doth belong to the Judge, and he cannot alter it, the execution belongs to the Sheriff, &c. and he cannot alter it. And if the execution might be altered in this caſe from hanging to beheading, by the ſame reaſon it might be altered to burning, ſtoning to death, &c. To conclude this point, Judicandum eſt legibus, non exemplis; and Judicium eſt Juris dictum, & Executio eſt executio Juris ſecundum judicium.

The forfeiture in caſe of Petit treaſon and felony (which is implyed in the judgment) is all one, which you may read in the Firſt part of the Inſtitutes. Sect. 747.

Deut. 21. 23. Vide Hil. 1 H. 5. Rog. Actons caſe. Quando peccaverit homo, quod morte plectendus eſt, & adjudicatus morti appenſus fuerit inpatibulo, non permanebit ejus Cadaver in ligno, ſed in eademdie ſepelietur. And the reaſon that Divines yeeld hereof is, for that by the execution of the judgement by death, the law is ſatisfied, and abhorreth cruelty, and in that caſe, Mors dicitur ultimum ſupplicium.

And herein this is obſervable, that in Treaſon and Felony, the judgment is onely of the fatall and corporall puniſhment, and nothing of the forfeiture, which is implyed, but in Common Pleas the judgments are more particular.

Iudgment in Appeal, when the Defendant joyning battail is vanquiſhed in the field, &c.

8 E. 3. Judgment 225. If the Defendant in Appeal be vanquiſhed in the field, the Record reciteth the vanquiſhing in the field. Ideo conſideratum eſt quod ſuſ. per coll. and ſo it is when the Defendant is vanquiſhed and ſlaine in the field, yet the judgement is ut ſupra. Otherwiſe there ſhould be no eſcheat: ſee the Second part of the Inſtitutes, W. 1. ca. 14.

Iudgment in Treaſon or Felony, wherein neither any corporall puniſhment or forfeiture is expreſſed.

Regiſt. 164. b. Fecit feloniam pro qua utlagatus fuit. In caſe of Treaſon or Felony, if any perſon be outlawed, the judgement upon the Exigent at the firſt County Court upon default of the party is, ideo, &c. per judicium Coronatoris Domini Regis comitatus prædict' utlagatus eſt. Which writt being duly returned of Record by the Sheriff, the party ſhall have the like corporall puniſhment, and ſhall loſe and forfeit as much as if he had appeared, &c. and judgment had been given againſt him in caſe of treaſon or felony reſpectively. And note that in theſe words (ideo utlagatur) both the corporall puniſhments and forfeiture alſo are implyed: and if the proceeding therein, or the judgment be erroneous, and upon his appearance upon the Capias utlagatum, if it appear to the Court (whereof any man, as amicus curiæ, may informe the Court) that the party may either avoid the outlawry againſt him by writ of error, or by plea, the Court ought not to award execution againſt the party, but aſſign him or her counſell learned, and require him or her by their advice, either to bring a writ of error or plead: but if the party refuſe to bring his writ of error or plead after convenient time be given, if the outlawry be erroneous and not void, the Court may award execution. And ſo it was reſolved, Termino Hil. Anno 3 Jacobi Regis, by the whole Court in the Kings Bench, and divers preſidents thereof ſhewed in the reigne of H. 6. E. 4. and one in the reign of Queene Eliz. which we ſaw; for as long as the attainder by outlawry ſtandeth in force, the party outlawed cannot be drawn in queſtion by any new indictment or appeal for the treaſon, or felony, for the which he was outlawed; for Auterfoitz attaint

19 H. 6. 2. a. Error Fi. 26. 28 E. 3. 91. a. 6 H. 4. 6. 9 H. 7. 19. b.

Hil. 3. Ja. Coram Rege per curiam.

Auterfoits attaint de meſme le offence.

attaint for the ſame offence is a good plea to free him from anſwer in that cauſe albeit the Record be erroneous. But if the Attainder or Outlawry be void againſt him, then may he be either arraigned upon the former indictment, or appeal, or newly indicted, &c. if there be cauſe. And therefore the Iudges are to take due conſideration of the whole Record of the Attainder or Outlawry, that they may be truly informed of the true ſtate of the cauſe, before they award execution of death againſt him upon the outlawry. Read Bracton lib. 3. Tract. 2. cap. 14. and Britton cap. 13. fo. 20, 21. excellently treating hereof, and Fleta lib. 1. cap. 27.

Vide 6 E. 3. 55. in Ajel. 12 E. 2. Eſch. 14. 19 E. 2. Cor. 387.

Bract. li. 3 f. 121. Britton fo. 20, 21. Fleta li. 1. ca. 27.

And by the Common law Auterfoitz attaint, &c. of the ſame felony was a good plea as well in an Indictment as in Appeal by the Common law. See the ſtatute of 3 H. 7. cap. 1. concerning appeal of death: ſo as in an appeal of death, at the ſuit of the party, Auterfoitz attaint de meſme le mort, is no plea at this day, but in caſe of an Indictment of death at the ſuit of the King, Auterfoitz attaint de meſme le mort in appeal is a good plea. Auterfoitz attaint de murder is a good plea to an Indictment, &c. of Petit treaſon of the ſame death, for in effect it hath the ſame judgement, and the ſelf ſame forfeiture. So likewiſe if a man be attainted of manſlaughter, it is a good bar to an indictment of murder of the ſame death, & è converſo.

Auterfoitz attaint dun auter offence. 28 E. 3. 90. b. Dier. 4 Eliz. Stones caſe. 6 H. 4. 6. 10 H. 4. Coron. 237. 6 E. 3. Cor. 394. 22 E. 3. Cor. 471. Stanf. f. 107, 108. See 44 E. 3. 44. 7 H 4. 31. 4 E. 4. 11. * 1 H. 6. fo. 5. Rot. Parl. 3 R. 2. nu 18 Jo. Imperials caſe.

By the Common law if a man were attainted of a felony done by him, and admitting he were after pardoned, he cannot at the ſuit of the King be impeached for any felony whatſoever before his ſaid Attainder by him committed, for by the Attainder he was mort in ley; and in that caſe he had the judgement due for felony, viz. Suſ. per coll. But the party may have his Appeal of Robbery, for a robbery done before the felony, whereof he was attainted, becauſe in the Appeal he is to have reſtitution of his goods, beſides judgement of death. * And if the party attainted of felony had committed High treaſon before his Attainder, he ſhall anſwer to the treaſon notwithſtanding his Attainder of felony, becauſe the King by the treaſon was intitled to have the forfeiture of all his lands, of whomſoever they were holden. Alſo for High treaſon there is another judgement, being an offence of an higher nature: but being attainted of felony, if he commit treaſon afterwards, he ſhall anſwer thereunto, becauſe it is of higher nature then the felony, but it ſhall not deveſt the right of Eſcheat, which lawfully was by the felony veſted in the Lords, contrary to the opinion of Juſtice Stanford in that caſe, for the act and offence of the party ſhall not deveſt the lawfull Eſcheat of the Lords: but if a man be attainted of treaſon, he cannot be after attainted of a former treaſon, cauſa qua ſupra.

Where a little before it is ſaid, that a felon by his Attainder is mort in ley, it is to be underſtood of ſuch former offences as require pœnam mortis: for notwithſtanding the Attainder, his body remains ſubject to arreſts and execution for debts, &c. Vide hic paulo poſt, Truſſels and Preſtals caſe in margine. Albeit for felony a man be adjudged to his penance, Pain fort & dure, yet he may be impeached for any former felony, becauſe the judgement is not given for the felony, but for his contumacy.

Dier 14 El. 308. Cobhams caſe.

If a man be attainted of Petit Larceny, he may be after attainted of felony, for the which he ſhall have judgement of death, becauſe it is an higher offence, and is to have an other judgement.

Auterfoitz acquite, and the Iudgement thereupon.

But Auterfoitz acquite, muſt be of the ſame felony, and albeit he be acquit of the latter felony, yet may he be arraigned of any former felony: and ſo it is in caſe of treaſon, Auterfoitz acquite of treaſon muſt be of the ſame treaſon, for it acquitteth no other, becauſe he ever remained a perſon able.

See Stanf. 105. a. & b. &c.

And albeit at this day in an appeal of death, Auterfoitz acquite, upon an indictment of the ſame death is no bar, yet in an indictment of death, auterfoitz attaint de meſme le mort in an Appeal is a good bar.

3 H. 7. ca. 1. 15 E. 3. Tit. Coron. 116.

In an Indictment or Appeal of death, if it be found that he killed him in

15 Aſſ. p. 7.

his own defence, he is acquited of the felony for ever.

Lib.4.fo.44,45. It appeareth in Vauxes caſe, that if a man be erroneouſly acquited of felony by verdict and iudgement thereupon given, yet if the Indictment, &c. be inſufficient, he may be indicted againe for the reaſons and cauſes in that caſe reported, which you may reade there at large, and need not here be repeated: And thereunto this we will add, that the reaſon, wherefore upon an erroneous iudgement of condemnation, the party (as hath been ſaid) is driven to his Writ of Error, and in the caſe of an erroneous iudgement of acquitall, that no Writ of Error needeth to be brought by the King, but the offendor may be newly indicted, &c. is this, that in the caſe of condemnation, the iudgement is, Quod ſuſpendatur, &c. which is the iudgement of law due for the offence, and ought to be given therefore, and can have no other intendment: but in the caſe of Acquitall the iudgement is Quod eat ſine die, &c. which may be given as well for the inſufficiency of the indictment, as for the parties innocency, or not guiltineſſe of the offence. And the Iudges of the cauſe ought before iudgement to looke into the whole Record, and upon due conſideration thereof to cauſe it to be entred, Ideo conſideratum eſt quod eat ſine die; which upon that report, and this addition implyed therein, we hold may ſatisfie the ſtudious reader.

And ſo it was adiudged Mich. 33 & 34 Eliz. coram Rege in an Appeale of death between Katherine Wrote and Tho. Wigges.

Vid. 19 E.3. Barre 444.

Vi. 3 H.4.f.3.11.

Auter foits convict de meſme le felony devant iudgement.

For this diviſion ſee Holcrofts caſe before in the Chapter of Murder, and Lib. 4.fo.45,46. where the ſtatute of 3 H.7.cap.1. is well expounded: and the ſecond part of the Inſtitutes Artic. ſuper Cart. cap.3. & Lib. Intr. Co. fo.53,54. &c. and Lib.4.fo.40. Wetherels caſe. And Stanford Lib.2. cap.37. in pl. coron.

Lib.4.fo.45.46. Holcrofts caſe. Second part of the Inſtitutes, Art. ſuper cart. cap.3. Lib. Intr. Co. 53, 54, &c. Lib.4.fo.40. Wetherels caſe. Stanf. lib.2. ca.37.

* Before the ſtatutes of 8 Eliz. cap.4. and 18 Eliz. ca.6. If a man had committed divers felonies, if he had been indicted of the laſt, and had benefit of his Clergy, he could not have been impeached for any of the former felonies, albeit for the ſame he could not have had his Clergy: by that Act it is provided, that notwithſtanding the allowance of ſuch Clergy, he may be impeached for any former offence, for which he could not have had his Clergy.

* *Auter foits convict, dun auter felony.* 25 E.3.cap.5. pro Clero.

Iudgement to reverſe an outlawry for treaſon or felony.

Vid. Paſc. 39 E.3. Rot.95. Scire fac. Dominis mediatis & immediatis.

The iudgement to reverſe an outlawry of A. B. in caſe of treaſon or felony in a Writ of Error is: Ideo conſideratum eſt quod utlagaria prædicta ob errorem prædict' & alios in recordo & proceſſ. prædict. compert', revocetur, adnulletur, & penitus pro nullo habeatur, & quod prædict. A.B. ad communem legem & omnia quæ occaſione utlagariæ prædict. amiſit, reſtituatur, &c. & quod ipſe eat ſine die.

If the Outlawry be avoided by plea, then the iudgement is, Ideo conſideratum eſt quod prædictus A. B. de utlagaria prædicta exoneretur, & quod ipſe ad communem legem, & omnia, quæ occaſione utlagariæ prædict. amiſit, reſtituatur, & ea occaſione non moleſtetur in aliquo, nec gravetur, ſed ſit, & eat inde quietus.

If A.B. be indicted of treaſon or felony in the Kings Bench, or if he be indicted before Commiſſioners of Oier and Terminer, or any other, & the Indictment of treaſon or felony is removed into the Kings Bench: and by Proces out of the Kings Bench he is erroneouſly outlawed and ſo returned, a Writ of Error may be brought in the Kings Bench for reverſall thereof.

And where it is holden by ſome, that if any perſon be attainted of High Treaſon by the Common law, that no Writ of Error ſhould be brought for the reverſall of that attainder by reaſon of theſe words of the ſtatute of 33 H.8. cap.20. *viz.* And if any perſon or perſons ſhall be attainted of High Treaſon by the courſe of the Common law, &c. that every ſuch attainder by the Common law ſhall be of as good ſtrength, value, force, and effect, as if it had been done by authority of Parliament. But the contrary hereof was reſolved at a Parliament holden Anno 28 Eliz. that a Writ of Error ſhould be maintained for the reverſall of erroneous attainders of High Treaſon by the Common law: for that ſtatute of

Stanf. pl.cor. 18. k. l.

33 H.8. cap.20.

33 H.

33 H.8. is to be intended of lawfull attainders by the due course of the Common law, and not of erroneous or void attainders. And thereupon at that Parliament holden anno 28 Eliz. an Act was made, That no Record of attainder of any person or persons, of or for any High Treason, where the party so attainted * is or hath been executed for the same treason, shall be, &c. in any wise hereafter reversed, undone, avoided, or impeached by any plea, or for any error whatsoever.

* Nota, this Act extends only to attainders of treasons before the Act of 28 El. where the party hath been executed, and not to attainders of treasons afterwards.

* And albeit judgement be given against a man in case of treason or felony, yet his body is not forfeited to the King, but untill execution remains his own. And therefore before execution, [a] if he be slain without authority of law, his wife shall have an Appeal; for notwithstanding the attainder he remained her husband. And after such attainder his body may at the suit of a Subject be taken in execution upon a judgement or statute, &c. And he may be executed for treason or felony, notwithstanding such execution had against him. And in an Action of debt, or other Action brought against a person attainted, he cannot plead the attainder, and demand judgement, if during the attainder he shall be put to answer: [b] for upon consideration had of the books in 11 Ass. 27. 2 E. 4. 1, 4 E. 4. 8. 6 E. 4.4. 6 H. 4.6 8 Eliz. Dier 245, &c. [c] it was adjudged that the person attainted should not plead the said plea, but should be put to answer. And there is a great diversity between an attainder of treason or felony, and an entry into Religion; for he that is attainted of treason or felony hath capacity, and [d] may purchase lands to him and his heirs, [e] but so cannot he that is entred into religion. And it is against a rule in law, that any man of full age should be received in any Plea by the [f] law to disable his own person, [g] or take advantage of his own wrong. And if the person attainted be beaten or maimed, or a woman attainted be ravished, after pardon, they shall have an Action of battery, Appeale of mayme, or Rape. See Lib. Intr. Co. 247, 248.

a 35 H.6.63.
b See Britton, ca. 122. Fleta lib.6. cap.6,7.
c Mich. 38 & 39. Eliz. in cõi banco Int. Banister & Trussel attaint de felony.
Vide Mich. 33 & 4 Eliz. coram Rege Rot. 532. Int. Ognel & Trussel.
Mic. 32 Eliz. inter Wade plaintife, & Prestal defendant attaint de haut treason, corã Rege. Vid. sup.
d See the first part of the Institutes Sect. 1.
e Car si home purchase.
Ibid. Sect. 199. 200. mort in ley.
f First part Inst. Sect. 405.
g 45 E. 3. 5 a. 18 E. 4. 25. 15 E. 4. 5 a. & c. Lit.
b Britt. ca. 122. a.
Encusement de crime.
Fleta lib. 6. c. 6, 7, &c.

[h] In ancient time a man indicted or appealed of life or member, or imprisoned, &c. should not be compelled to answer at other mens suits, but (as before it appeareth) these opinions have been justly changed.

[i] There was a notable case adjudged in the Kings Bench Mic. 26. & 27. Eliz. wherewith I was well acquainted concerning the matters of outlawry and errors before spoken of, which was in effect as followeth.

Ninianus Menvile nuper de Stedwich in Com' Dunelm' ar' Anno 1 & 2 Ph. & Mar. was indicted in the Kings Bench of High Treason, and upon Proces he was outlawed, and so returned, and his daughter and heire brought a Writ of Error in the Kings Bench, wherein two errors were assigned. 1. That before the Exigent the 2. Capias with a Proclamation was awarded to the Sheriffe of the County Palatine of Durham, where it ought to have been directed to the Chancellour of that County. [k] For that point 30 H.6.6. 36 H.6.35.1 E.4.10. the book of Entries Rast. fo. 52, Stanf. pl. cor. 68, 69. & 70. Vid. 19 H. 6. 2. 31 H. 6. 11. but the Court gave no opinion concerning this Error. The other Error that was assigned, was, that the Sheriffe returned upon the said Capias, that at his Court holden at the City of Durham the eight day of July in the second and third years of the reigne of King Philip and Queen Mary he made the Proclamation, &c. and there were no such years: for Queen Mary began her reigne the 6 day of July, and the 25 day of July in the 2 year of her reign she maried King Philip; so as between the 2 day of July, and the 25 day of July, the Queen wrote two years before the King. And therefore there could be no such years as 8 July Anno 2 & 3. but should have been 2 & 4. And so was the clear opinion of the whole Court. But then it was objected, that by the said Act of 35 H. 8. and Stanfords opinion thereupon, that the attainder by outlawry being an attainder by the Common law, it could not be reversed by Writ of Error, for that the said Act of 35 H.8. was to be intended of lawfull attainders: And after great deliberation the outlawry of treason was reversed. And I take it, it shall not be altogether impertinent, sure I am it shall not be unprofitable, to report the consequent of this reversall. In the next Term, sc. Term. Hil. anno 27. Eliz. for that Queen Eliz. had the lands whereof the said Ninian was seised in fee: his wife

i Mic. 26 & 27 El. Ninian Melvins case in the Kings Bench in Bre de Errore.
k See the Stat. of 8 H.6.cap.10.

Hil. 27 Eliz. in Filaciis Cancellariz.

by petition of right, which comprehended the title of the wife, and the title of the Queen, claimed her dower, which in effect was this; That her husband was seised of certain lands in fee, and took her to wife: and before his treason committed Anno 1 Mariæ levied a Fine with Proclamation to another, whose estate the Queen had by lawfull conveyance therein expressed; and that afterward her said husband was attainted of High Treason by outlawry, ut supra, and died in anno 4. Eliz. which outlawry was the last Terme reversed in a Writ of Error, as is aboveſaid: which Petition being indorsed by the Queen, Soit droit fait al partie, and delivered into the Chancery, Sir Thomas Bromley a man of great gravity and judgement in law, then being Lord Chancellor of England, by advice of all the Iudges resolved these Four points following. First, that the petitioner need not to have any office to finde her title, because her title standeth with the title of the Queen, and the Queen is not intitled by office (which she might traverse, or confesse and avoid) but by conveyance, which she affirmeth. Secondly, that a Fine with Proclamations, and five years past after the death of the Husband doth bar the wife of her dower, and that the conusee shall take advantage thereof, and of the attainder also. Thirdly, that albeit five years and many more in this case were past since the death of her husband, yet the said fine with Proclamations did not bar her; because as long as the said attainder of treason stood in force, she was barred of her dower, and could not have any remedy, or pursue her title, untill the outlawry were reversed, and then her title of dower did first grow due unto her, and therefore she might within five years after the reverſall of the said outlawry, pursue her title by the expresse words of the saving of the Act of 4 H. 7. Fourthly, albeit an attainder reversed by a Writ of Error, is as concerning restitution to the party by relation from the beginning become of no force, [a] and the Record so annihilated thereby, as Nul tiel Record may be pleaded thereunto: yet this relation shall never work a bar, and consequently a wrong to a stranger, but that the truth of the matter may be shewed, viz. the Record, and the reverſall of the same: and the rather (as some said) because the wife could not have any Writ of Error to reverse the outlawry, [b] so as she had no mean to pursue her right so long as the outlawry remained in force. which it did, untill it was reversed by error. But admit the wife had been (in a remote degree of consanguinity) heir to her husband, so as she might within five years after the death of her husband have had her Writ of Error after the death of her husband to reverse the outlawry, and to enable her self to pursue for her dower, and reverseth not the outlawry within the five years: I hold in this case that she shall have five years after this reverſall, and that within the said saving of the statute of 4 H. 7. for then did her title of dower (as hath been said) first grow unto her, * and it was not in her power to reverse the outlawry when she would. And in this Term of S. Hillary, Popham Attorny Generall, according to the said resolution of the Lord Chancellor and Iudges, confessed the Petition to be true; and therepon Iudgement was given, that she should be indowed, and was indowed accordingly.

Vide Lib. 2. fo. 93. Binghams case. See the first part of the Institutes. Sect. 55.

4 H. 7. cap. 24. the first saving.

[a] 26 E. 3. 75. 4 H. 7. fo. 22. & 11. 12. 38 H. 6. 4 & 12. 21 E. 4. 23. Dier 29. H. 8. fo. 32. pl. 8: idem. 6 Eliz. 228. pl. 45. 3 Eliz. fo. 188. pl. 2. Lib. 8. fo. 42. 43. b. Dr. Druryes case.

[b] 34 H. 6. fo. 2.

* Nota.

[c] By the statute of 26 H. 8. and 5 E. 6. it is enacted, that all Proces of outlawry against any offenders in treason, being out of the Realm, or beyond the seas, at the time of the outlawry pronounced, shall be as good and effectuall as if the offenders had been within the Realme at the time of the outlawry pronounced. See the said Statute of 5 E. 6. cap. 11. that, if the party outlawed shall within one year after the outlawry pronounced, yeeld himself to the Chief Justice of England, and traverse the said indictment, &c. and thereupon be found not guilty by verdict, he shall be clearly discharged of the said outlawry.

[c] 26 H. 8. cap. 13. 5 E. 6. cap. 11. These statutes not only extend to all treasons by the statute of 25 E. 3. by the Common law, but by any other statute. Vi. Dier 12 Eliz. fo. 287. accord. First part of the Institutes, Sect. 479.

Iudgement in case of abjuration for felony, whiles it was of force.

After the flying of a felon for any kinde of felony whatsoever, Sacrilledge excepted, (but in case of High Treason or Petit Treason a man could never abjure, because the Coroner is not allowed by law to be a Judge of those haynous crimes) into a Church, &c. for safegard of his life: and upon his prayer of a Coroner,

Coroner, [a] and his voluntary and particular confeſſion of the felony before the Coroner, naming the certain time, the iudgement was, Idem A. petiit de præfato Coronatore regnũ dom Regis Angliæ abjurare: Super quo tradito [b] ei libro p præfat coronatorẽ, idem A. regnũ prædict' corã præfato coronatore pdict' die &c. in eccleſia prædicta abjuravit, in idem regnum nunquam rediturus abſque ſpeciali licentia, & reconciliatione regis Angliæ, & aſſignatus eſt eidem A. pro tranſitu ſuo extra regnum prædictum Portus de Yarmouth [c] Cruce in manu ſua dextra poſita, prout lex Angliæ eſt & conſuetudo. Nothing is expreſſed in this Iudgement but abjuravit regnum, but therein is implyed, that all his lands, which he had at the time of the felony committed, [d] (and therefore the time of the felony was ſet down in his confeſſion particularly) or at any time after eſcheated to the Lords of the fees, and forfeited to the King all his goods which he had at the time of his attainder, [e] the time whereof alſo was expreſſed certainly, and his blood corrupted, and other incidents, as in other attainders of felony, only by his voluntary and particular confeſſion. In this caſe for the offence of felony, he ſaved his life ſo long as he kept himſelf extra regnum, but if he returned, then under this word [abjuravit] is implyed Suſ. per collum, Mich. 1 R. 2. Rot. 1. Bedf. rediit & ſuſpend. See the firſt part of the Inſtitutes, Sect. 200. fo. 132, 133. and the Second part of the Inſtitutes, W. 1. cap. 20. verbo, [f] [Forejure le Realm.] Artic. Cler. cap. 10. & 15. And the law was ſo favourable for the preſervation of Sanctuary, that if the Felon had been in priſon for the felony, and before attainder or conviction, [g] had eſcaped and taken Sanctuary in Church or Church-yard, &c. and the Gaolers or others had purſued him, and brought him again to priſon, upon his arraignment he might have pleaded the ſame, and ſhould have been reſtored again to the Sanctuary: See more concerning Abjuration, Mic. 9 E. 3. Coram Rege Rot. 84. extra legem poſitus, &c. To conclude this Iudgment of Abjuration, we take it, that for felony [h] Abjuration is utterly taken away. For abjuration of Recuſants and of Hunters in Parks, &c. we have given but a light touch, becauſe they belong not to our treatiſe of the Pleas of the Crown, nor have we ſpoken any thing of abjuration in caſe of Hereſy, quia ſpectat ad aliud forum.

Thus have we ſpoken of Iudgments, and attainders in caſes of high treaſon, upon verdict, confeſſion, or nihil dicit, and by outlawry: in caſe of Petit treaſon upon verdict, confeſſion, or by outlawry: and in caſe of felony, upon verdict, or confeſſion, or by outlawry, or by abjuration, for none can be attainted of Petit treaſon or felony upon a nihil dicit, or refuſall to anſwer, but in that caſe the Delinquent is to have his puniſhment of Peine fort & dure, which next falleth to be handled.

[a] 6 E. 3. 53. in Ajell Malloms caſe. 12 E. 2. eſche. 14. Tr. 21 E. 1. Coram Rege 42. ſimile.

[b] Hereupon it was called abjuration, becauſe he was ſworn to depart the Kingdome. See the Oath. Vet. Mag. Cart. 1. part f. 167, 168.

[c] That he might be known to be an abjured perſon, and not be let, or hindred in his journy. Et Crux fuit ſignum ſervatæ vitæ per eccleſiam, and is ſometime called vexillum Sanctæ Eccleſiæ. Hil. 26 E. 3. Corã Rege Rot. 20.

[d] Pl. Com. f. 262. a. in Dame Hales caſe. Regiſter fo. 164. b. Fecit feloniam pro qua regnum noſtrum abjuravit.

[e] Scaef. Pl. Cor. 117. E. 6 E. 3. 15. in Ajell Malloms caſe. 12 E. 2. Eſch. 14. 6 E. 2. Forf. Br. 121. 6 H. 4. 6.

[f] Forejure in French is taken for abjure, in latin abjurare. 1 E. 3. 17. lib. Intr. Raſt. fo. 246. b. pl. 6.

[g] Lib. Int. Raſt. 532. b. Sanct. 2. Hil. 43 E. 3. Rot. 115. Buck. William Attewels caſe.

[h] For all Sanctuaries are taken away by 21 Jac. ca. 28. Note a Sanctuary in the ſtatute of 1 H. 7. cap. is called a hidel or hydle, becauſe it hideth and protecteth the party, &c. Vide Deut. cap. 19. 3. 9, 10. Numb. 35. 13. Joſhua 20. 8. See 2. part of the Inſtitutes, Gloc. cap.

Peyne fort & dure.

In caſe of Petit treaſon or felony, [i] when the offender ſtandeth mute, and refuſeth to be tryed by the Common law of the land; See Paine fort and dure in the Second part of the Inſtitutes, W. 1. cap. 2. but this holdeth but in caſe of Petit treaſon and felony. In caſe of High treaſon, upon ſtanding mute, or a nihil dicit, the iudgement aforeſaid ſhal be given againſt him, as if he had been convicted.

[i] Firſt part of the Inſtit. Sect. 545. verb. Attaint. 2. part of the Inſtit. W. 1. c. 12. Dier 3 El. 205. a. 13 El. 300. b. See before in the chap. of Treaſon. See after in the next chapter of Forfeiture fo. when the party arraigned chalgeth peremptorily above the number of 36. viz. three whole Juries. & 35 H. 6. 57, 58. Vide li. 9. fo. 124. the Lord Zanchers caſe.

And in doing of execution, both in treaſon and felony, two things are to be obſerved. Firſt, that it be done by the right Officer, as the Sheriff, or Marſhall, for if any other execute the offender, it is felony. Secondly, execution muſt be made by him that is the right Officer according to the iudgement: For example, [k] where the iudgement is, that the offender ſhall be hanged, he cannot behead him, &c. as before is ſaid. Bracton lib. 3. fo. 104. b. Non alio modo puniatur quis, quam ſe habeat condemnatio. P. 20 R. 2. Coram Rege Rot. 58. Lincoln. Non licet felonem pro felonia decollari.

Iudgement

Iudgement in caſe of Petit larceny.

Bracton lib.3. fo.151.b. Britton.fo.24.a. Fleta li.1.ca.36. Bracton lib.3. fo.104.b, maketh mention of puniſhment, verberibus & virgis. * 18 Aſſ.p.13. 8 E.Cor.130. 41 E.3. Cor.451.

The iudgement herein was in ancient time referred to the diſcretion of the Iudge, as in Bractons **time,** Per fuſtigationem, & ſic caſtigatus dimittitur. **In** Brittons **time, ſometime by the Pillory, ſometime by the loſſe of the ear: and** Fleta **ſaith,** Eſt enim furtum de re magna & parva, pro minimo tamen latrocinio 12 denariorum & infra, nullus morti condemnetur; pro hujuſmodi modicis delictis inventa fuerunt judicialia Pilloria, & deformitates corporum, ut ſciſſio auricularum.

* **But in ſince the reign of** E.3. **no perſon loſt any member for Petit larceny, but were ſometime puniſhed by impriſonment, and ſometime by other penance, as whipping, &c. If the Delinquent flyeth for Petit larceny, and ſo be found by the Jury, he forfeiteth his goods.**

Iudgement in caſe of miſpriſion of High Treaſon.

That the offender by the Common law ſhall for this concealment forfeit all his goods, and the profits of his lands during his life, and ſuffer impriſonment during his life. Vide Stanford Pl. Coron. fo.38.1 & 2 Mar.cap.10.

Iudgement for ſtriking in Weſtminſter hall, &c. ſitting the Courts.

Tr.4 E.4. Coram Rege Rot.3. 19 E.3. Judgement.174. 39 Aſſ.p.1. 41 Aſſ.25. 22 E.3. 13.a. 41 E.3. Coron. 280. 42 Aſſ. 18. Stanf. Pl. Cor. 38. c. 3 Eliz. Dier 188.

That the offender ſhall be impriſoned during his life, forfeit all his lands, tenements, goods and chattels, & quod manus ſua dextra amputaretur (apud talem locum:) **and this Iudgement is given by the Common Law.** Bracton lib.3. 104.b. Pœnarum quædam adimunt membrum, & corporis coercionem, ſc. impriſonamentum, vel ad tempus, vel imperpetuum.

Iudgement for ſtriking and drawing blood in the Kings Court, &c.

The offender ſhall have his right hand ſtricken off, be impriſoned during his life, and be fined and ranſomed at the Kings will: and this Iudgement is given by the ſtatute of 33 H.8.cap.12. 33 H.8. Paine Br.16.

1 & 2 Ph. & Mar. ca.3. obtruncatio manus dextræ.

We cannot omit to touch by the way an Act made in 1 & 2 Ph. & Mar. **intitled, an Act againſt ſeditious words and rumours; by a branch of which Act, he that ſhould ſet forth any book, ryme, ballad, letter or writing containing any falſe matter, clauſe or ſentence of ſlander or reproach, and diſhonour of the King and Queens Majeſty, or either of them, &c. ſhould have his or their right hand ſtricken off; which Act being but a Probationer, at the Parliament in** 4 & 5 Ph.& Mar. **was continued untill the end of the next Parliament. And** 1 El.c.6. **by the Act of** 1 Eliz. **(which was the next Parliament) the ſaid Act of** 1 & 2 Ph. & Mar. **was enacted to extend to Queen** Elizabeth, **and to the heirs of her body Kings and Queens of this Realm, ſo as by the demiſe of Queen** Eliz. **that Act hath loſt his force, as it was well worthy, being a dangerous Act, as ſome had felt in anno** 23 Eliz.

Iudgement in a Premunire at the ſuit of the King.

See the 1.pt of the Inſtit. §.159. t 44 E.3.36.

If the Defendant be in priſon, Quod prædictus R. ſit extra protectionem domini Regis, & terras, & tenementa, bona & catalla domino Regi forisfaciat, & quod corpus ejus remaneat in priſona ad voluntatem Regis, **as in the book of Entries,** Raſt. Judgement 465. **And this Iudgement is given by the ſtatutes of** 25 E.3.ca.22. 25 E.3. de Proviſoribus, 27 E.3. ca. 1. 16 R.2. ca. 5. **and if he be not in priſon,** Quod præd.R. ſit extra protectionem domini regis, & terras & tenementa, bona & catalla domino regi forisfaciat, & quod capiatur.

Iudgment in caſe of Theftbote.

5 E.3.Cor.353. 29 E.3.9. 27 Aſſ.69. 42 Aſſ.pl.5. Stanf.fo.40.b.

That the offender be fined; and it is to be obſerved that whenſoever the Delinquent, or Defendant is to be fined, the Iudgement is quod capiatur, that is, to be impriſoned untill he doth pay his fine: but when the Defendant is to be amerced, and not fined, then the Defendant is in miſericordia, whereof you

may

map read at large, Lib.8.fo. 38,39. &c. & 59,60. & 120, Lib.11. 43,44.

Pillory.

Pillory is a French word, and it is derived of the French word Pilaſtre a Pillar, columna. Et eſt lignea columna, in qua collum inſertum premitur, and thereupon in law it is called Colliſtrigium, quia in eo collum hominum conſtringitur: this puniſhment is very ancient, for the Saxons called it Healtrauz, ſo called for ſtraining the neck. Britton fo. 24. ſaith, that thoſe that have been adjudged to the Pillory, or Tumbrell, are ſo infamous, Come ilz ne ſont receivables al ſerement faire in juries, enqueſts ou en teſtmoignants; and herewith agreeth Bracton. Vet.Mag.Cart. 2.parte fo. 23,24.45.

Saxonicè *Heilsſang*, or *Halſſang*, *Hals* colli, *ſang* preſſio. It is alſo called an amerciament for commutation of ſuch a puniſhment. 51 H.3. Judicium Colliſtrigii. Et Pillorii, Vet.N. B. 1. parte. 116,117. Britton fo. 24. Mirror cap. 4. §. De paines en divers manners. Kelway Temps E. 3. 145. b. Fleta li. 2. cap. 8. By the ſtatute of 51 H.3. & 31 E.1. Vet. Mag. Cart. 2. parte. fo. 23,24-45.

Tumbrell.

Tumbrell is a word in uſe at this day for a Dungcart. Bracton calleth it Tymboralem.

Britton lib. 3. fo. 104 b. 129. b. 15 .b.138. Mirror ubi ſupra, Temps E.3. Kelway 139,140. b. 149. b. 152. Fleta li. 2. ca. 11. §. Item ſi diſtus Li. Intr. Raſt. 494. a. in Quo warr. 7 E. 2. in eodem 260. b

Infligitur pœna corporalis; ſc. pilloralis vel tumberalis cum infamia. Secundum regni ſtatuta, It is called tumbrellum, there being no proper latin word for a Dungcart.

Furce Pillot & Tumbrell append al View de Franckpledge. And every one that hath a Leet or Market ought to have a Pillory and Tumbrell &c. to puniſh offenders, as Brewers, Bakers, Foreſtallers, &c.

Trebuchet.

Or caſtigatory, named in the ſtatute of 51 H.3. ſignifieth a Cucking ſtool, and Trebuchet properly is a pitfall or downfall, and in law ſignifieth a ſtool, that falleth down into a pit of water, for the puniſhment of the party in it. And Cuck, or Guck in the Saxon tongue, ſignifieth to ſcould or brawl, (taken from the Cuckhaw, or Guckhaw, a bird, qui odioſe jurgat & rixatur) and Inge in that language [water] becauſe ſhe was for her puniſhment ſowſed in the water; and others fetch it from Cuchquean, i. pellex.

Stat. de 51 H.3. ubi ſupra. Vet.Mag.Cart. part 2.fo.44,45. Stat. de pane & ceviſia.

Now for that the Judgement to the Pillory or Tumbrell (as it hath appeared before) doth make the Delinquent infamous, and that the rule of law is, Judicium de majore pœna quam quod legibus ſtatutum eſt non infamum facit, ſed per breve de errore adnullare poteſt, and again, pœna gravior ultra legem poſita æſtimatione conſervat, that the Juſtices of Aſſiſe, Oier and Terminer, Gaol-delivery, and Juſtices of Peace, would be well adviſed before they give judgment of any perſon to the Pillory or Tumbrell, unleſſe they have good warrant for their judgement therein. Fine and impriſonment for offences finable by the Juſtices aboveſaid, is a fair and ſure way.

Judgements to be given by Juſtices of Aſſiſe, of Oier and Terminer, of Gaol-delivery, of Juſtices of Peace.

And it is to be obſerved that thoſe kinds of puniſhments of Pillory, &c. have been given by Acts of Parliament in caſes of enormious and exorbitant offences, as by the ſtatutes of 51 H.3. 31 E.1. De piſtoribus, &c. 31 E.1. De foreſtallariis. 11 H.7. ca. 4. 33 H.8. ca. 1. 1 & 2 Ph. & Mar. cap. 10. 2 E.6. ca. 15. 5 E.6. ca. 6. & 14. 7 E. 6. ca. 7. El. c. 7. 5 El. ca. 9. 16. 18 El. cap. And therefore the ſafeſt way for them is to follow thoſe Acts of Parliament in caſes provided by the ſame: But of the Court of the Kings Bench, (the higheſt Court of ordinary Juſtice) in reſpect of the multitude of the judiciall preſidents (which we have ſeen) we ſay with the Poet, Huic nec metas rerum, nec tempora pone, (for judiciall preſidents of grave and reverend Judges, are good guides to direct men in the right way) we will enumerate ſome of them.

* Vet.Mag.Cart. pte 2, fo.24,25.

21 E.1. Coram Reg. Rot. 2. Euſtachius de Porles Caſtel, for ſlandering of Juſtice Berisford, impriſonment in the Tower, ad voluntatem regis.

Exemplary puniſhments adjudged in the Kings Bench.

Mich. 33 E.1. Coram Rege, Rot. 75. William Brewces caſe, for ſlandring, &c. of Roger

Roger Hegham Iuſtice. Tr. 3 E.2. Int. Mem. Scaccarii **for ſlandring of Foxley, a Baron of the Exchequer.** Mich. 18 E. 3. coram rege, Rot. 151. **for ſlandering of the Iuſtices of the Kings Bench, by a Letter of** Tho. Bulbroke **a Clerk of the ſame Court.** 30 Aſſ. p. 5, 19. 19 Aſſ. 1. Paſch. 10. E. 3. Rot. 87. Thom. Twyce Hazarder cõis ludens ad falſos talos adjudicatur quod per ſex dies in diverſis locis ponatur ſuper colliſtrigium. Mich. 10 E. 3. Rot. 92. coram rege, Adam de Ravenſworth. Mich. 21 E. 3. coram rege. Warw. Verſſ. Attornat̃ apparent̃ ſine Warranto. Hil. 25 E. 3. coram rege, Rot. 13. verſus Robert̃ Hadham Commiſſionarium pro venditione Bladi in garbis adjudicatur priſonæ, & quod ab omni officio Domini Regis amoveatur & finem faciat. Tr. 2 H. 4. coram rege, Rot. 10. Suſſex. Mich. 4 & 5 Eliz. coram rege, Hugh Bakers **caſe, for a Libell againſt certain of the inhabitants of Cherſie, puniſhed by impriſonment, Pillory, and good behaviour,** &c.

Ancient rules of law in corporall puniſhments. Bracton lib. 3. fo. 105. a. Ibid.

See the fourth part of the Inſtitutes, Cap. Star-Chamber, **for puniſhment by Pillory,** &c. **for enormious and exorbitant offences, which require more exemplary puniſhment then an ordinary courſe of the Laws of the Realm do inflict.** Nobiles magis plectuntur pecunia, plebei vero in corpore; **which is obſervable in all the ſaid ſtatutes. And** Bracton **ſaith,** Quælibet pœna corporalis, quamvis minima, major eſt qualibet pœna pecuniaria. Carcer ad continendos, non ad puniendos haberi debet, &c. Pœnæ potius molliendæ, exaſperandæ ſunt. Reſpiciendum eſt judicanti, ne quid aut durius, aut remiſſius conſtituatur, quam cauſa deposcit; nec enim aut ſeveritatis, aut clementiæ gloria affectanda eſt. Aliter puniuntur ex eiſdem factionibus ſervi, quam liberi: & aliter qui quidem aliquid in dominum, parentemve commiſerit, quam in extraneum; in magiſtratum, quam in privatum.

Ibid.

Death of a man per infortunium.

Marlbr. cap. 25.

Bracton ubi ſup.

Of this miſchance there is no expreſſe judgement to be given, but the offender is to ſue out his pardon of courſe, as it appeareth in the ſecond part of the Inſtitutes, Gloc. cap. 9. **And hereof** Bracton **ſaith,** Caſu, cum per infortunium, ut ſi aliquis venando per telum in feram miſſum, hominem interfecerit, & ſimilia perpetraverit, &c. **But albeit there be no expreſſe judgement given upon ſuch a verdict, yet the law giveth a judgement thereupon,** viz. **that he ſhall forfeit all his goods and chattels, debts and duties whatſoever, as in the** ſecond part of the Inſtitutes, *ubi ſupra*, **it appeareth.**

Judgement implyed, or in law. 24 H. 8. cap. 5.

Of death of a man, ſe defendendo.

Judgement implyed or in law. See ca 7. fo. 5. b. 43 Aſſ. p. 31. Rot. Parl. 5 R. 2. nu. 18. John Imperials caſe.

Upon ſuch a verdict given the Court giveth no expreſſe judgement, for he is alſo to be pardoned of courſe: but the law hath given a judgement, that he ſhall forfeit all his goods and chattels, debts and duties, as in the ſecond part of the Inſtitutes, *ubi ſupra*, **it appeareth. But the Jury cannot finde that the party killed him generally** ſe defendendo: **but they ought to finde the caſe ſpecially, ſo as the Court may judge whether in law it be** ſe defendendo, **or no. See** Stanf. fol. 15.

Of the death of a man that offereth to rob, &c.

If it be found by verdict, that the party (indicted or appealed for the death of A) A attempted to have murdered or [a] **robbed him in or nigh any common High way, Cart way, Horſe-way, or foot-way, or in his** [b] **manſion or dwelling houſe; or for the killing of him which attempteth Burglary to break his dwelling houſe in the night; the judgement upon ſuch a verdict ſhall be, that he ſhall be acquitted of the death of ſuch a perſon paying his fees, and he ſhall forfeit nothing. And ſo it is** [c] **declared and enacted by the ſtatute of 24 H. 8.**

a 3 E. 3. cor. 305.
b 3 E. 3. cor. 330. 26 Aſſ. 23. Exod. 22. Si effringens vir domum ſive ſuffodiens fuerit inventus, & accepto vulnere mortuus fuerit, per cuſſor non erit reus ſanguinis.

And if all the circumſtances be proved to the Jury in evidence required by this Act in theſe caſes, the Jury may finde a generall verdict of not guilty. And where it is rehearſed in the ſaid Act of 24 H. 8. that before that Act it was a queſtion and ambiguity whether evill diſpoſed perſons ſo attempting, ut ſupra, **ſhould forfeit their goods and Chattels: the reaſon of that queſtion and ambiguity was in**

c Nota, declared, &c. and ſo was the common law, as by the Books aforeſaid it appeareth.

none

none of thoſe caſes mentioned in that Act, no Robbery, Murder, or Burglary was done, but an attempt onely to do it. But it was no queſtion at the Common law, that if a Robbery, Murder, Burglary, or other felony was done, and purſuit made after the offender, who either by reſiſtance or flight could not be apprehended without killing of him by inevitable neceſſity, the party ſo purſuing and killing ſhould not forfeit his goods or chattels; for in thoſe caſes every man may arreſt the felon by a warrant in law. But there is a diverſity between a warrant indeed, and a warrant in law, in this, that if a man be indicted of Murder, Robbery, Burglary, or other felony, and the Sheriffe by vertue of a Capias offer to arreſt him, and he reſiſteth, and fly, ut ſupra, the Sheriffe may kill him, if otherwiſe he cannot arreſt him, although in truth the party be not guilty, nor any felony done. But in the caſe of the aboveſaid warrant in law, there muſt be a felony done, and this diverſity appeareth in our Books. * and ſo it is, if after arreſt for felony the party arreſted reſiſteth or flyeth, and in purſuit is ſlaine by inevitable neceſſity, they ſo killing him forfeit nothing.

An Approver that kils the party accuſed in battell, or a Champion that killeth the other Champion in a Writ of Right, or the plaintife or defendant in an appeale that killeth the other in duello, according to the Common law, or in combat awarded by the [a] Conſtable and Marſhall in the Court of Chivalry, the party killing ſhall forfeit nothing; for theſe combats or duels are ſuch trials as the law appoints in ſuch caſes. For, ſaith Fleta, Duellum eſt ſingularis pugna inter duos ad probandum veritatem litis; & qui vicerit, probaſſe intelligitur: & quamvis judicium Dei expectatur ibid. quicunque tamen monomachiam, *i.* ſingularem pugnam ſponte ſuſceperit, aut obtulerit, homicida eſt, & mortale contrahit peccatum. But before we leave theſe Champions, it is to be obſerved that whoſoever taketh upon him to be a Champion for another (the forme and [b] oath whereof you may read in the Second part of the Inſtitutes, W. 1. cap. 40. & Glanvil lib. 2. cap. 3.) if he become recreant, that is, a crying Coward or Craven, he ſhall for his perjury [c] loſe liberam legem. [d] Craven is derived of the Greek word κραυγὴ, à vociferatione: others neerer home, of crying and craving of mercy and forgivenelle. And recreantia is derived of the French word recreance, of giving back or cowardize. And ſometime it is called creantia [e] per antiphraſin, becauſe he that uſeth it is not faithfull, but breaketh his oath. And ſo if the Appellant joyne battell, and cry Craven, he ſhall alſo loſe liberam legem for the cauſe aforeſaid, but if the Appellee cry Craven hee ſhall be hanged: * but if they combat untill night come, and ſtarres appear, the defendant in the appeal goeth quit, and the plaintife in that caſe loſeth not liberam legem. [f] Amittere liberam legem is to become infamous and of no credit, never to be witneſſe, or Juror: for when he is of fame and credit, he is called Liber & legalis homo: and ſuch men ought to be of Juries and Witneſſes, becauſe they do enjoy liberam legem. § And a Champion ought to be liber homo, and ſo is the Entry, per corpus liberi hominis. Et quam infamiam victus incurrit, ſee Glanvile lib. 2. cap. 3. & lib. 14. cap. 1. And he further ſaith, Talis debet Campio petentis eſſe, qui ſit, & eſſe poſſit inde teſtis idoneus. So as no man by the ancient Common law could be a Champion, but he that knew the right, and was a witneſſe thereof: and therewith agreeth the ſtatute of W. 1. cap. 40. wherein obſerve what the oath was by the Common law. Aliquando patria ſtat pro campione, & aliquando in bre de recto campio ſtat pro patria. Campio is derived à campo, becauſe it is publickly ſtroken in the field, and is called Camp-fight: and is taken in the Common law for one that ſtriketh a legal Camp-fight or Combat in another mans quarrel: in Latin he is called * Pugil, à pugna. But the defendant in an appeal that is to combat, is not called a Champion, becauſe he fighteth for himſelfe. And theſe combats in caſes whereof the conuſance belongs to the Common law, are to be directed by the Judges of the Common law ſecundum legem & conſuetudinem Angliæ, and not by the Conſtable and Marſhall by the Civill law, as all our ancient Authors and Bookes aboveſaid do agree, which alſo is apparent by the ſtatute of 13 R. 2. ca. 2.

22 Aſſ. p. 55.
21 E. 3. cor. 261.
3 E. 3. Cor. 328.
3 E. 3. ibid. 288. 289, 290.
* See in the Cha. of Hue and Cry.
a Rot. Pat. 3 H. 4. part. 2. Duellum percuſſum.
13 H. 4. 4.
37 H. 6. 20, 21.
See before in the Chapter of Approver.
Fleta lib. 1. ca. 32.
b 4 E. 3. 41.
30 E. 3. 20.
29 E. 3. 12.
13 Eliz. Dier 301
Mirror. cap. 3. § Combat, & § Juramentum duelli, & § Ordinatio pugnantiũ.
c Judgement in law againſt a Recreant and Craven Champion is *perdere liberam legem.* See a notable Record hereof R. pa. 55 H. 3. m. 3
Glanvil li. 2. c. 3. lib. 14. cap. 1.
d Mirror cap. 3. § Ordinatio pugnantiũ, L' horrible mort de Cravent.
e 41 E. 3. cor. 98. *Creant* for *recreant.*
Bract. lib. 3. f. 141.
Brit. fo. 42. 81.
Fleta lib. 1. ca. 32.
19 H. 6. fo. 35.
21 H. 6. 34.
* Mir. c. 3. § ubi ſu.
f Glanvil lib. 2. cap. 19. Legem terræ amittentes perpetuã infamiæ notã inde merito incurrunt.
See the firſt Part of the Inſt. Sect. 514, 27 Aſſ. 59. liberam legem. qui, &c.
§ 1 H. 6. 6.
3 H. 6. 55.
See the oath in appeal, Bracton lib. 3. fo. 141. b. Britton fo. 42.
Fleta lib. 1. ca. 32.
Glanvil lib. 2. c. 3.

Lib. 9. cap. 1. Et lib. 14. cap. 1. 9 H. 4. 3. 17 Aſſ. 17 E. 3. 2. 9 E. 4. 25. Fleta ubi ſup. Lib. Int. Co. fo. 182. 55 H. 3. ubi ſup.

Iudgement in an Indictment of Conſpiracie, &c. where the party indicted is legitimo modo acquietatus.

4 H. 5. Indict. 220. Tr. 18 E. 3. coram Rege. Rot. 148. Wilt. judicium reddit. cont. Conſpiratores. Paſch. 32 E. 3. Rot. 58. Somerſ. 27 Aſſ. 59. 24 E. 3. 34. 43 E. 3. 33. b. Vid. Artic. ſuper cart. cap. 10.

Nota, the judgement in this caſe is, as in caſe of attaint againſt a Jury, (whereof we ſhall ſpeak hereafter,) viz. Quod committantur Gaolæ Domini Regis, & quod omnia terræ & tenementa prad. R. & C. capiantur in manum Domini Regis, & devaſtentur, & extirpentur, & uxores & liberi eorum amoveantur, & omnia bona & catalla eorundem R. & C. forisfaciant Domino Regi, & amodo amittant liberam legem imperpetuum.

Nota in this judgement Five ſevere puniſhments. 1. That their bodies ſhall be impriſoned in the common Gaole. 2. Their wives and children amoved out of their houſes. 3. That all their houſes and lands ſhall be ſeiſed into the Kings hands, and the houſes waſted and the trees extirpated. 4. All their goods and chattels forfeited to the King. 5. That they for ever ſhall loſe the freedome and franchiſe of the law. That is, Firſt, they ſhall never be of any Jury or Recognitors of Aſſiſe. Secondly, nor ever be received for a witneſſe in any caſe. Thirdly, that they ſhall never come into any of the Kings Courts, but make Attornies, if they have any thing to do there. And this is called a * villanous judgement, becauſe of the villany and infamy which they deſerve againſt whom it is given: And all is inflicted by the Common law, for that the offenders by falſe conſpiracy under the pretext of law, by indictment of treaſon or felony and legall proceeding thereupon, ſought to do the greateſt injuſtice by falſe conſpiracy to ſhed his blood, who afterwards is thereof legitimo modo acquietatus.

* 24 E. 3. fo. 33. 27 Aſſ. 53.

But in a Writ of Conſpiracy at the ſuit of the party grieved, the Judgement is, damages to the party, fine to the King, and impriſonment. And the reaſon thereof is, Firſt, for that when they are indicted at the ſuit of the King, the judgement is ſo ſevere, for that they falſely conſpired in the Kings name, and at the Kings ſuit by indictment, &c. to do ſo horrible injuſtice: therefore at the Kings ſuit they ſhall be heavily puniſhed. Secondly, for that as it is ſaid in 15 E. 2. De exilio Hugonis, &c. the law which was inſtituted for the maintenance of peace and of good men, and the puniſhment of the evill, is turned to the diſheritance of the great men, and deſtruction of the people. Thirdly, for that the judgement at the Kings ſuit is by the Common law, and the Action of the party is given by ſtatute, which giveth no ſuch puniſhment: but the party in his action, in reſpect of the danger of his life, is to recover anſwerable damages. Of Conſpiracy ſee the Regiſter fol. 134. a & b. & 188. F. N. B. 114. 115, &c. Stanf. pl. cor. fol. 172, 173, 174, 175, &c. and in the new Book of Entries, fol. 109. a preſident of a conſpiracy upon an indictment of felony.

4 H. 5. judg. 220. 24 E. 3. 34. 27. aſſ. 59.

43 E. 3. 33. b. Tr. 32 E. 1. Rot. 15 Eborum.

Parl. 17 E. 3. nu. 50.

It is enacted, that ſuch as be attainted of Confederacy or Conſpiracy, ſhall have no office of the grant of the King, Queen, or other Noble, neither ſhall be Sheriffe or Eſcheator.

Iudgement in an Attaint.

Lib. Int. Raſtal. fo. 92 a. 9 E. 4. 51. 4 H. 5. ubi ſup. 15 Aſſ. 2. Kelway 130. b. Glanvil. lib. 2. cap. 19. Bracton. lib. 4. fo. 129. Brit. fo. 237, 238. Mirror ca. 3. § de attaint.

1. That the plaintife ſhall be reſtored, &c. and the defendant party to the Record, ſhall be fined in reſpect the falſe verdict was given for him (cui bono) by the Common law.

The judgement againſt the Petit Jury is, as it is in caſe of Conſpiracy at the ſuit of the King, as is aboveſaid, and in no other, but in thoſe two caſes, that villainous judgement is given. See 8 E. 2. Aſſ. 396. and 42 E. 3. 26. b. Judgements given in Attaint, & nota bene. 16 E. 3. tit. Judgement. 109. 21 H. 7. 83. Kelway. a good preſident of a judgement given in an attaint. Forteſcue ca. 26. Concerning Attaints, ſee the ſecond part of the Inſtitutes, Marlb. cap. 14. W. 1. cap. 37, &c.

Flet. lib. 5. ca. 21. Apud Northalverton in Com. Eborum coram Hen. de Guildford & aliis Juſt. aſſignatis An. 35 E. 1. attincta. See the firſt part of the Inſtitutes. Sect. 514. Verb. [en attaint.] Vide Mich. 3 H. 4. Rot. 149. judgment en attaint. Kanc.

But now by the ſtatute of 23 H. 8. cap. 3. the ſeverity of the puniſhment is moderate,

derated, if the Writ of Attaint be grounded upon that ſtatute: but the party grieved may at his election either bring his Writ of Attaint at the Common law, or upon that ſtatute: but all attaints either at the Common law or upon the ſtatute are to be taken before the King in his Bench, or before the Iuſtices of the Common Pleas, and in no other Courts.

This Act of 23 H.8. provideth for divers miſchiefs which were at the Common law, and giveth to thoſe of the Petty Jury divers pleas, which they could not have at the Common law, and hath been well erpononed. 7 E.6. Dier 81.b. Sir Iohn Ailifs caſe. 3 & 4 Ph.& Mar. 129.b. Heydons caſe. 3 Eliz.201. Clovils caſe. 3 Eliz. 202. Auſtens caſe. 7 Eliz.23.b.Stephens caſe. See the Record thereof upon the ſtatute of 23 H.8. for it is an excellent preſident.

And generally of Attaints, See Lib.ſo. 111, 112. Lib.3. ſo.4. Lib. 6.ſo.4.14. 25,26,44,80. Lib.8.ſo.60. Lib.9.ſo. 12. Lib.10.ſo. 119. Lib.11. ſo.6.43.62. See alſo the new Book of Entries, 63,66,68,70.73,76,77,81,83,85,86, &c.

Iudicium de corrupto Iudice.

We could not paſſe over a ſtrange judgement of Suſpendatur &c. as in caſe of felony (which we have touched before in the Chapter of Bribery) given againſt Sir William Thorpe, lately before Chief Iuſtice of England, which we finde of Record in theſe words. Proceſſus factus An. 24 E. 3. contra Willielmum Thorp chivaler nuper capitalem Juſticiarium coram Ricó Comite Arundel. T.de Bellocampo Comite Warw. Willielmo de Clinton Comite de Hunt. Joh. de Gray de Rothersfield Seneſchallo hoſpitii Regis, & Barthol. de Burgherſ. Camerar Regis: Pro eo quod idem Willielmus Thorp nuper capitalis Juſticiarius Domini Regis ad placita coram ipſo Rege tenenda, dum ſtetit in officio, cepit munera contra juramentum ſuum, viz. de Richard Saltley 10. li. de Hildebrando Boreſward 20 li. de Guilberto Hollyland 40. li. de Tho. Darby Sancti Botulphi, & de Roberto Dalderby 10. li. qui pro diverſis feloniis, falſitatibus, & tranſgreſſionibus coram ipſo Willielmo in ſeſſione ſua apud Lincolne Anno 23. fuerunt indictati, & per ipſum Willielmum bre de exigendo verſ. eos reſpect' fuit: quæ omnia & ſingula dedicere non potuit: Ideo adjudicatum fuit, prout ſequitur. *viz.* Conſideratum eſt per dictos Juſticiarios aſſignatos ad judicandum [a] ſecundum voluntatem Domini Regis, & ſecundum regale poſſe ſuum, quod quia prædictus Willielmus de Thorpe qui Sacramentum Domini Regis quod erga populum habuit cuſtodiendum fregit [q] malicioſe, falſe, & rebelliter in quantū in ipſo fuit, & ex cauſis ſupradictis per ipſum Willielmum, ut prædictum eſt, expreſſe cognitis, ſuſpendatur. Et quod omnia [c] terræ & tenementa, bona & catalla ſua Domino Regi remaneant forifacta. Et poſtea Dominus Rex mandavit bre ſuum ſub privato ſigillo, all in French, and there entred de verbo in verbum. Ideo conſideratum eſt quod executio Judicii prædicti de ſuſpenſione ejuſden Willielmi omnino ceſſet & ei pardonetur. Et quod idem Willielmus remittatur priſonæ Turris prædict. ad gratiam Domini Regis expectandam &c. Et non eſt intentio Domini Regis quod hujuſmodi judicium in conſimili caſu verſus quemcunque alium ex quacunq; cauſa ſe teneat vel extendat, ſed ſolummodo verſus eos qui prædictum [d] Sacramentum fecerunt, & fregerunt & habent leges regales Angliæ ad cuſtodiend'.

Rot.pat. Anno 24 E.3.part.3. m.2 in dorſ.& Rot.pat.Anno 25 E.3.part.1. m.17.

In toto 80.li.

a The effect of the words of the oath hereafter mentioned.

b Nota, here is neither *felonice*, nor *proditorie* in this Indictment, but *rebelliter*.

c According to the ſaid oath, for otherwiſe the King had no colour to have the forfeiture of all his lands for felony, but every Lord of whom they were reſpectively holden, &c.

d Nota, prædictum ſacramentum.

[e] We have alſo found, that at a Parliament holden at Weſtminſter in Octabis Purificationis beatæ Mariæ, Anno 25 E.3. holden before Lionel Duke of Clarence by force of the Kings Commiſſion, &c. Commandement was given, that the Record of the ſaid Judgement againſt the ſaid Sir William Thorp ſhould be brought into the Parliament, and there to be openly read before the Nobles of the Parliament to hear every of their advices, which was done accordingly, and there the Nobles affirmed the judgement.

e Rot ParLin Oct.Pur.An.25 E.3.nu.10.

And theſe words in the ſaid judgement, Ad judicandum ſecundum voluntatem Domini Regis, & ſecundum regale poſſe ſuum, and that his lands ſhould be forfeit to the King, & prædict. Sacramentum, were grounded upon the oath of the Kings Juſtices in Anno 18 E. 3. the concluſion of which Oath is, [upon pain to be at the Kings will, body, lands, and goods, thereof to be done as pleaſeth him.]

Iudgement in an Indictment of Conſpiracie, &c. where the party indicted is legitimo modo acquietatus.

4 H. 5. Indict. 220. Tr. 18 E. 3. coram Rege. Rot. 248. Wilt. judicium reddit. cont. Conſpiratores. Paſch. 32 E. 3. Rot. 58. Somerſ. 27 Aſſ. 59. 24 E. 3. 34. 43 E. 3. 33. b. Vid. Artic. ſuper cart. cap. 10.

Nota, the judgement in this caſe is, as in caſe of attaint againſt a Jury, (whereof we ſhall ſpeak hereafter,) viz. Quòd committantur Gaolæ Domini Regis, & quod omnia terræ & tenementa prædict. R. & C. capiantur in manum Domini Regis, & devaſtentur, & extirpentur, & uxores & liberi eorum amoveantur, & omnia bona & catalla eorundem R. & C. forisfaciant Domino Regi, & amodo amittant liberam legem imperpetuum.

Nota in this judgement Five ſevere puniſhments. 1. That their bodies ſhall be impriſoned in the common Gaole. 2. Their wives and children amoved out of their houſes. 3. That all their houſes and lands ſhall be ſeiſed into the Kings hands, and the houſes waſted and the trees extirpated. 4. All their goods and chattels forfeited to the King. 5. That they for ever ſhall loſe the freedome and franchiſe of the law. That is, Firſt, they ſhall never be of any Jury or Recognitors of Aſſiſe. Secondly, nor ever be received for a witneſſe in any caſe. Thirdly, that they ſhall never come into any of the Kings Courts, but make Attornies, if they have any thing to do there. And this is called a * villanous judgement, becauſe of the villany and infamy which they deſerve againſt whom it is given: And all is inflicted by the Common law, for that the offenders by falſe conſpiracy under the pretext of law, by indictment of treaſon or felony and legall proceeding thereupon, ſought to do the greateſt injuſtice by falſe conſpiracy to ſhed his blood, who afterwards is thereof legitimo modo acquietatus.

* 24 E. 3. fo. 33. 27 Aſſ. 53.

But in a Writ of Conſpiracy at the ſuit of the party grieved, the Judgement is, damages to the party, fine to the King, and impriſonment. And the reaſon thereof is, Firſt, for that when they are indicted at the ſuit of the King, the judgement is ſo ſevere, for that they falſely conſpired in the Kings name, and at the Kings ſuit by indictment, &c. to do ſo horrible injuſtice: therefore at the Kings ſuit they ſhall be heavily puniſhed. Secondly, for that as it is ſaid in 15 E. 2. De exilio Hugonis, &c. the law which was inſtituted for the maintenance of peace and of good men, and the puniſhment of the evill, is turned to the diſheritance of the great men, and deſtruction of the people. Thirdly, for that the judgement at the Kings ſuit is by the Common law, and the Action of the party is given by ſtatute, which giveth no ſuch puniſhment: but the party in his action, in reſpect of the danger of his life, is to recover anſwerable damages. Of Conſpiracy ſee the Regiſter fol. 134. a & b. & 188. F. N. B. 114. 115, &c. Stanf. pl. cor. fol. 172, 173, 174, 175, &c. and in the new Book of Entries, fol. 109. a preſident of a conſpiracy upon an indictment of felony.

4 H. 5. judg. 220. 24 E. 3. 34. 27. aſſ. 59.

43 E. 3. 33. b. Tr. 32 E. 1. Rot. 15 Eborum.

It is enacted, that ſuch as be attainted of Confederacy or Conſpiracy, ſhall have no office of the grant of the King, Queen, or other Noble, neither ſhall be Sheriffe or Eſcheator.

Parl. 17 E. 3. nu. 50.

Iudgement in an Attaint.

Lib. Int. Raſtal. fo. 92. a. 9 E. 4. 51. 4 H. 5. ubi ſup. 15 Aſſ. 2. Kelway 130. b. Glanvil. lib. 2. cap. 19. Bracton. lib. 4. fo. 129. Brit. fo. 237, 238. Mirror ca. 3. § de attaint.

1. That the plaintife ſhall be reſtored, &c. and the defendant party to the Record, ſhall be fined in reſpect the falſe verdict was given for him (cui bono) by the Common law.

The judgement againſt the Petit Jury is, as it is in caſe of Conſpiracy at the ſuit of the King, as is aboveſaid, and in no other, but in thoſe two caſes, that villainous judgement is given. See 8 E. 2. Aſſ. 396. and 42 E. 3. 26. b. Judgements given in Attaint, & nota bene. 16 E. 3. tit. Judgement. 109. 21 H. 7. 83. Kelway. a good preſident of a judgement given in an attaint. Forteſcue ca. 26. Concerning Attaints, ſee the ſecond part of the Inſtitutes, Marlb. cap. 14. W. 1. cap. 37, &c.

Flet. lib. 5. ca. 21. Apud Northalverton in Com. Eborum coram Hen. de Guildford & aliis Juſt. aſſignatis An. 35 E. 1. attincta. See the firſt part of the Inſtitutes. Sect. 514. Verb. [en attaint.] Vide Mich. 3 H. 4. Rot. 149. judgment en attaint. Banc.

But now by the ſtatute of 23 H. 8. cap. 3. the ſeverity of the puniſhment is moderate,

derated, if the Writ of Attaint be grounded upon that ſtatute: but the party grieved may at his election either bring his Writ of Attaint at the Common law, or upon that ſtatute: but all attaints either at the Common law or upon the ſtatute are to be taken before the King in his Bench, or before the Juſtices of the Common Pleas, and in no other Courts.

This Act of 23 H.8. provideth for divers miſchiefs which were at the Common law, and giveth to thoſe of the Petty Jury divers pleas, which they could not have at the Common law, and hath been well expounded. 7 E.6. Dier 81. b. Sir Iohn Ailifs caſe. 3 & 4 Ph.& Mar. 129. b. Heydons caſe. 3 Eliz. 201. Clovils caſe. 3 Eliz. 202. Auſtens caſe. 7 Eliz. 23. b. Stephens caſe. See the Record thereof upon the ſtatute of 23 H.8. for it is an excellent preſident.

And generally of Attaints, See Lib. fo. 111, 112. Lib. 3. fo. 4. Lib. 6. fo. 4. 14. 25, 26, 44, 80. Lib. 8. fo. 60. Lib. 9. fo. 12. Lib. 10. fo. 119. Lib. 11. fo. 6. 43. 62. See alſo the new Book of Entries, 63, 66, 68, 70. 73, 76, 77, 81, 83, 85, 86, &c.

Iudicium de corrupto Iudice.

We could not paſſe over a ſtrange judgement of Suſpendatur &c. as in caſe of felony (which we have touched before in the Chapter of Perjury) given againſt Sir William Thorpe, lately before Chief Juſtice of England, which we finde of Record in theſe words. Proceſſus factus An. 24 E. 3. contra Willielmum Thorp chivaler nuper capitalem Juſticiarium coram Ricõ Comite Arundel. T. de Bello-campo Comite Warw. Willielmo de Clinton Comite de Hunt. Joh. de Gray de Rothersfield Seneſchallo hoſpitii Regis, & Barthol. de Burgherſ. Camerar Regis: Pro eo quod idem Willielmus Thorp nuper capitalis Juſticiarius Domini Regis ad placita coram ipſo Rege tenenda, dum ſtetit in officio, cepit munera contra juramentum ſuum, viz. de Richard Saltley 10. li. de Hildebrando Boreſward 20 li. de Guilberto Hollyland 40. li. de Tho. Darby Sancti Botulphi, & de Roberto Dalderby 10. li. qui pro diverſis feloniis, falſitatibus, & tranſgreſſionibus coram ipſo Willielmo in ſeſſione ſua apud Lincolne Anno 23. fuerunt indictati, & per ipſum Willielmum bre de exigendo verſ. eos reſpect' fuit: quæ omnia & ſingula dedicere non potuit: Ideo adjudicatum fuit, prout ſequitur. *viz.* Conſideratum eſt per dictos Juſticiarios aſſignatos ad judicandum [a] ſecundum voluntatem Domini Regis, & ſecundum regale poſſe ſuum, quod quia prædictus Willielmus de Thorpe qui Sacramentum Domini Regis quod erga populum habuit cuſtodiendum fregit [b] malicioſe, falſe, & rebelliter in quantũ in ipſo fuit, & ex cauſis ſupradictis per ipſum Willielmum, ut prædictum eſt, expreſſe cognitis, ſuſpendatur. Et quod omnia [c] terræ & tenementa, bona & catalla ſua Domino Regi remaneant foriſfacta. Et poſtea Dominus Rex mandavit bre ſuum ſub privato ſigillo, all in French, and there entred de verbo in verbum. Ideo conſideratum eſt quod executio Judicii prædicti de ſuſpenſione ejuſden Willielmi omnino ceſſet & ei pardonetur. Et quod idem Willielmus remittatur priſonæ Turris prædict. ad gratiam Domini Regis expectandam &c. Et non eſt intentio Domini Regis quod hujuſmodi judicium in conſimili caſu verſus quemcunque alium ex quacunq; cauſa ſe teneat vel extendat, ſed ſolummodo verſus eos qui prædictum [d] Sacramentum fecerunt, & fregerunt & habent leges regales Angliæ ad cuſtodiend'.

Rot. pat. Anno 24 E.3. part. 3. m. 2. in dorſ. & Rot. pat. Anno 25 E.3. part. 1. m. 17.

In toto 80. li.

[a] The effect of the words of the oath hereafter mentioned.

[b] Nota, here is neither *felonice*, nor *proditorie* in this Indictment, but *rebelliter*.

[c] According to the ſaid oath, for otherwiſe the King had no colour to have the forfeiture of all his lands for felony, but every Lord of whom they were reſpectively holden, &c.

[d] Nota, prædictum ſacramentum.

[e] We have alſo found, that at a Parliament holden at Weſtminſter in Octabis Purificationis beatæ Mariæ, Anno 25 E.3. holden before Lionel Duke of Clarence by force of the Kings Commiſſion, &c. Commandement was given, that the Record of the ſaid Judgement againſt the ſaid Sir William Thorp ſhould be brought into the Parliament, and there to be openly read before the Nobles of the Parliament to hear every of their advices, which was done accordingly, and there the Nobles affirmed the judgement.

[e] Rot. Parl. in Oct. Pur. An. 25 E.3. nu. 10.

And theſe words in the ſaid judgement, Ad judicandum ſecundum voluntatem Domini Regis, & ſecundum regale poſſe ſuum, and that his lands ſhould be forfeit to the King, & prædict. Sacramentum, were grounded upon the oath of the Kings Juſtices in Anno 18 E. 3. the concluſion of which Oath is, [upon pain to be at the Kings will, body, lands, and goods, thereof to be done as pleaſeth him.]

We desirous to satisfie our selfe herein, searched for the Record of this oath, and albeit there is a Parliament Roll of this Parliament, and other Acts, then passed by Authority of Parliament, be entred into the said Roll, yet this is not; for that it had not the warrant of an Act of Parliament. It ought to have been printed amongst the statutes of the Realm, and the title of them is, Here followeth the oath of the Iustices made in the same eighteenth year, but saith not at the Parliament, &c. but after it became to be printed: and that which is printed in anno 20 E. 3. ca. 1. is but a recitall made by the King alone, and no Act of Parliament: for it appeareth by that which precedeth, and by the oath it self, that it was the Act onely and commandement of the King, for it beginneth: First, we have commanded all our Iustices, &c. which former part was but a recitall of some precedent Act: and then followeth, We have ordained and caused our said Iustices to be sworn, &c. so as the oath was devised by the King, and the Iustices sworn before this Parliament. Lastly, it is there said and concludeth: And for this cause we have encreased the fees of our said Iustices, &c. which the King of himself did before this Act also.

And we have an ancient Manuscript of the Acts of Parliament in Anno 18 E. 3. and the oath is not within it.

Fleta li. 1. ca. 17. §. Cum igitur non sit, &c.

And it appeareth by Fleta, that the punishment of a corrupt Iudge, that receiveth gift or reward was, Si inde convictus fuerit, quod imperpetuum à concilio regis excludatur; terrasque, res, redditus, & proventus bonorum suorum amittat per unum annum: qui, si proventus non habuerit, puniatur per discretionem regni & consiliariorum regis. And that which Fleta calleth Sacramentum Justic', in Vet. Magna Carta, is named Juramentum consiliariorum regis: for the Iudges of England are of the Kings Counsell (as elsewhere hath appeared) for, in, and concerning the lawes of the Realm, in which oath also the said fatall clause is omitted.

Vet. Mag. Cart. 1. parte fo. 165. Vide Bract. li. 3. fo. 109. Sacrament, Justic' itiner' and that then was the effect, de sacramẽt Justic' residentium.

See the Mirror cap. 4. §. de faux Iudges, & ca. 5. §. 1. of the law in the time of King Alfred, how many Iustices were in one year hanged, as homicides, for their false judgements: but that law hath been long since deleat and antiquated, and yet may serve for a memoriall of the time past.

Vid. Flet. l. 2. c. 7. §. Item atrox est injuria, &c.

The offence of Bribery was punished by fine, and ransome, and losse in the reign of E. 1. as in the Chapter of Extortion and Bribery before appears: onely Sir Thomas Weyland Chief Iustice of the Common Pleas, took Sanctuary, and before a Coroner confessed himselfe guilty of murder, and according to the course of the Common law abiured the Realm, so as indeed he was attainted of felony, (which case hath been vehemently urged) but it was not for bribery, but for murder, as any other man might have been.

8 R. 2. ca. 3. Vide Vet. Mag. Cart. fo. 165. a. ubi supra. 9 R. 2. cap. 1.

But to winde up the thread of this discourse with three Acts of Parliament. First, with the statute of 8 R. 2. wherein it is recited that whereas in the time of King E. 3. it was ordained, that Iustices as long as they should be in office, should not take gift or reward, and so forth, as in Veteri Magna Carta, (without the said fatall clause) That Act provideth, that the oath without that fatall clause should extend as well to the Barons of the Exchequer, as to the Iustices, and expressed the penalty of all to be (according to the Common law) viz. losse of office, fine and ransome. But at the next Parliament, viz. 9 R. 2. the said Act of 8 R. 2. for that it was [a] very hard, and needed declaration, was made of no force till it be declared in Parliament. [b] Afterwards at the Parliament holden 11 H. 4. it was debated what punishment great Officers there named Counsellors of the King, and Iudges, &c. should have, which should take any gift, reward, or brocage for doing of their offices or services: in the end it was declared and enacted by Authority of Parliament, in these words following. Item que nul Chancellor, Treasorer, Garden del Privy Seal, Counsellier du Roy, Servientes a Counsell du Roy, ne nul autre Officer, * Jugge ne ministre du Roy pernont fees ou gages de Roy pur lour dites offices ou service, preigne en nul manner, en temps avenir ascun manner de [c] done ou brocage de nulluy pur lour ditz offices & services affaire, sur peine de 1 responder a Roy de la treble de ceo,

a In respect of the recitall.

b Ro. Par. 11 H. 4. nu. 28. not heretofore printed. Vid. 1. H. 4. nu. 99

* Nota.

c This is agreeable to the law of God, Deut. 16. 19 Non accipies personam, nec munera, quia munera excæcant oculos sapientum, & mutant verba justorum. Exodus 23. 8.

que

que iſſi preignont, 2 & de ſatisfier la party, 3 & puis al volunt le roy, & 4 ſoit diſcharges de ſon office, ſervice, & counſell pur touts jours, & que cheſcun que verra purſuer en la dit mattier eit la ſute ſibien pur le roy come pur lui meſme, & eit la tierce part del ſumme de que la partie ſoit duement convict. *Reſpons.* Le roy le voet.

Nota Four puniſhments. 1. By the Court of juſtice where the matter ſhall depend (as hath been often obſerved) by fine and impriſonment.

[a] This Act being by Authority of Parliament, hath limited the puniſhment (amongſt others) of corrupt Iudges, of whom now we entreat, ſo as the former example of Sir William Thorp is not now to be followed, which we affirm not in favour of ſordid bribery, (which we hate, as in the proper Chapter thereof before appeareth) but in advancement of juſtice and right, which is the end of our labour in this and other of our works; [b] and therefore have cauſed that good Act that hath lived ſo long in obſcurity, for the better notice and obſervation thereof, to be put to the preſſe, which never was yet printed: and the cauſe thereof was for that in the Margent of the Parliament Roll of this Act, it is written, Reſpectuatur per dominum Principem & Concilium: A ſtrange preſumption without warrant of the King his Father, and of the Parliament, to cauſe ſuch a reſpectuatur to be made to an Act of Parliament.

[a] In the oath of the Juſtices in Wales, that fearful clauſe is omitted, neither is it in the oath of the Barons of the Exchequer of England.

[b] Veritas nihil veretur niſi abſcõdi.

The like he did to another Act in the ſame Parliament, nu. 63. concerning Attorneys, the like whereof was never done in any former or latter Parliaments. [*] This was that Prince Henry, who keeping ill company, and led by ill Counſell, about this time aſſaulted (ſome ſay) and ſtroke Gaſcoign Chief Juſtice ſitting in the Kings Bench, for that the Prince endeavouring with ſtrong hand to reſcue a priſoner, one of his unthrifty minions indicted and arraigned at the Kings Bench Bar for felony, was prevented of his purpoſe by the perſwaſion and commandement of the Chief Juſtice, for which the Chief Juſtice committed the Prince to the Kings Bench, whereof ſome of his followers inſtantly complained to the King his Father: who informing himſelfe of the true ſtate of the caſe, gave God infinite thanks, that he had given him ſuch a Iudge, as feared not to miniſter juſtice, and ſuch a ſon, as could ſuffer ſemblably and obey juſtice. And this is that Prince, who abandoning his former company and counſell, and following the advice of grave, wiſe, and expert men, whom he made choiſe of to be of his Counſell, became a victorious and vertuous King, and proſperous in all that he took in hand, at home and abroad.

[*] See Sir Tho. Eliot in his Governour, &c. Hol. Chron. 543. a.

For the duty of Iudges, it is truly ſaid (as before hath been ſaid) that Iudex debet habere duos ſales, viz. ſalem ſcientiæ, ne ſit inſipidus, & ſalem conſcientiæ, ne ſit diabolus. And what perſons ſhould be Iudges, ſee Bracton lib. 1. cap. 2. & lib. 3. fo. 106. & Fleta lib. 1. cap. 17. § caveat, and the Mirror ca. 2. §. 2. de Iudges, & Rot. Parl. 17 E. 3. nu. 3, 10.

To theſe we will add, that upon the concluſion of a marriage then to be had between Philip the ſon of the Emperour, and Prince of Spain, it was nobly and wiſely provided by the Queen, the Lords Spirituall and Temporall, and the Commons by authority of Parliament (amongſt many other excellent proviſions worthy of obſervation) that the ſaid Prince ſhould not promote, admit, or receive to any office, adminiſtration or benefice in the Realm of England, & the Dominions thereunto belonging, any ſtranger, or perſons not born under the dominion and ſubjection of the moſt noble Queen of England: and that the ſaid moſt noble Prince ſhould doe nothing whereby any thing might be innovated in the ſtate or right, either publique or private, or in the laws & cuſtomes of England, or the Dominions thereunto belonging, but ſhall contrariwiſe confirm and keep, to all eſtates and orders, their rights and privileges.

Anno 1 Mar. ſtat. 2. ca. 2. in print. See the Articles of Concord, 21 Maii Anno Dom. 1420. & Anno 8 H. 5. between King H. 5. and Charles the French King, whereby the Crown of France after the death of the ſaid Charles, was eſtabliſhed to H. 5. and his heirs. Artic. 7, 8, &c.

And it is there further provided for the future, &c. that if the ſaid Prince ſhould have iſſue male or female, the order of ſucceſſion is there declared, but with this Proviſo. Provided nevertheleſſe, and expreſſly reſerved in all and ſingular the above declared caſes of ſucceſſion, that whatſoever he or ſhe be, that ſhall ſucceed in them, they ſhall leave to every of the ſaid Realms, Lands and Dominions whole and entire their privileges, rights, and cuſtomes, and the ſame Realms and Dominions ſhall adminiſter and cauſe to be adminiſtred by

by the naturall borne of the ſaid Realms, Dominions and Lands.

By this, Philip (after King of Spain) could not prefer any ſtranger borne, to any office of Iudicature, &c. within the Realm of England, or Dominions of the ſame, nor all the time he was within this Realm, ever attempted the ſame.

Vide Camden. El. 322. Artic. inter reginam Eliz. & Franciſcum Ducē Alonſon anno 23 El. Populo ſuper importune ut nuberet ſuadente in comitiis..

And in the Articles, De matrimonio prælocuto inter Reginam Elizabetham & ducem de Alonſon, amongſt others it was expreſly provided, Quod dux nullum extraneum ad aliquod officium in Anglia promovebit, & nihil in jure mutabit, &c.

[a] Alſo King James wiſely provided by Authority of Parliament, by the advice of the Lords Spirituall and Temporall, and Commons in that Parliament aſſembled, that whereas in regard of ſome difference and unequality of the laws, trials, and proceedings * in caſe of life, between the Iuſtice of the Realm of England, and that of the Realm of Scotland, it appeareth to be moſt convenient for the contentment and ſatisfaction of all his Majeſties Subjects to proceed (with all poſſible ſeverity) againſt ſuch offenders in their own Country according to the laws of the ſame, whereunto they are born and inheritable; and by and before the naturall born Subjects of the ſame Realm, if they be there apprehended. And by the next clauſe it is provided, that felonies committed by Engliſhmen in Scotland, ſhall be enquired of, heard, and determined before Iuſtices of Aſſiſe, or Commiſſioners of Oier and Terminer, and Gaol delivery, being naturall born Subjects within the Realm of England, and none other. And the like in another clauſe with an addition of Iuſtices of Peace to be naturall born Subjects within England; and God bleſſed and proſpered this Act with happy and deſired ſucceſſe.

a 4 Ja. Regis c. 1. about the midſt.

* That caſe being then in queſtion.

Math. Par. pag. 363. 380. 383, &c. Hol. Chron. pag. 231. 1071. a. b.

But contrariwiſe, Petrus de Rupibus, or of the Rocks, being a Gaſcoign born, preferred to be Biſhop of Winchester by King John, and being a principall Counſeller about King H. 3. both in his young years, did after in his riper age prefer to offices about the King, ſuch Gaſcoigns as were of his blood or alliance, (whereof one of his kindred, ſome ſay his ſon, Peter de Orival Treaſurer of England) to the great griefe and diſcontentment of the Nobility of England to have a Gaſcoign born in place above them. And what heavy event enſued thereupon, let Hiſtorians inform you, for it is grievous to me to remember it.

Vide 50 E. 3. nu. 165. for the keeping of the caſtle of Nottingham.

If you deſire to ſee ſomewhat concerning Eccleſiaſticall offices, promotions, and benefices, firſt what petitions have been made in Parliament againſt Aliens or Strangers; look in the Parliament Rolls of 50 E. 3. nu. 96, 97, 120 13 E. 3. nu. 23. 17 E. 3. nu. 59, 60. 18 E. 3. nu. 38. 2 R. 2. nu. 6 H. 4. nu. 48. 4 H. 6. nu. 29. &c. And what laws have been made that Aliens or Strangers ſhould not be advanced to the ſame; Vide 35 E. 1. Statut. de Carliſle. 3 R. 2. ca. 3. 7 R. 2. ca. 12. Rot Parl. 13 R. 2. not in print. 1 H. 5. ca. 7. 4 & 5 Ph. & Mar. ca. 6.

Vide 18 E. 1. Rot Parl. nu. Solomon de Rolfes caſe.

CAP.

CAP. CII.

Forfeiture, Confiſcation, &c.

NOta confiſcare & forisfacere are Synonyma, and bona confiſcata are bona forisfacta: Fiſcus properly ſignifieth a Panier or Hamper of Oſiers, wherein the Romanes kept their treaſure, and by the figure of Metonymia continens pro contento, it is taken for the treaſure it ſelfe, unde confiſcare, and bona confiſcata, and thereupon it is ſaid, Quod non capit Chriſtus, capit Fiſcus.

For the derivation of *forisfacere*, See the Firſt pt of the Inſtitutes, Sect. 74. fo. 59. a. 3 E. 3. forfeit. 24.

Of forfeiture of lands and tenements, and other hereditaments for high treaſon, petit treaſon, felony, miſpriſion of treaſon, præmunire, and in ſome caſes of miſpriſion, * and what hereditaments which be not holden ſhall be forfeited for high treaſon, and ſhall not eſcheat for Petit treaſon or Felony, we have ſpoken before in their ſeverall chapters, &c. now let us ſpeak of forfeiture of goods and chattels in theſe and ſome other caſes.

* See before cap. High Treaſon, Verbo [Deſtates & tenements, &c.] fol. 18. & 19. Et cap. de Petit treaſon. Verb. [Et de tiel manner de treaſon,] &c. fol. 21.

[a] Of theſe the forfeiture of ſome of them muſt appear, or be found of Record, and therefore theſe cannot be claimed by preſcription; of other ſome the forfeiture need not appear, or be found of Record, and therefore theſe may be gained by preſcription.

a See the 1. pt of the Inſtitutes, of both theſe branches.

[b] Of the former ſort be bona & catalla proditorũ, felonum, ut lagat', in exigend' poſitorum, fugitivorum, deodand', annus, dies, & vaſtum, &c. and all other forfeitures which muſt appear or be found of Record.

b See the 1. part of the Inſtitutes, ubi ſupra, both the former and latter ſort.

Of the latter ſort be Treaſure trove, bona & catalla waviat', extrahur', wreccum maris, &c.

[c] If a Traitor or Felon either reſcue himſelfe, or will not ſubmit him to be arreſted, but reſiſteth, and in reſiſtance is ſlain; upon preſentment hereof he forfeiteth all his goods and chattels.

c 3 E. 3. Cor. 250. 312.

[d] If a Felon in purſuit wave his own goods, they are forfeited, yet are they not bona waviata.

d 29 E. 3. 29. 45 E. 3. Cor. 100.

If in appeale of robbery the Plaintif omit any of the goods ſtoln, they are forfeit to the King for the favour, which the law preſumeth the Plaintif beareth to the Felon: and for that he cannot have reſtitution for more then is in his appeal.

In appeal of robbery of goods, if the Jury find that the Defendant found them in the high way, in this caſe the Plaintif for his falſe appeal in ſeeking the blood of the innocent, ſhall forfeit his goods to the King.

3 E. 2. Cor. 367, 368.

If one arraigned for treaſon or petit treaſon, challengeth peremptorily above thirty five: he forfeiteth his goods, and judgment of Pain fort & dure ſhall be given againſt him, as one that refuſeth the triall of law, by challenging three ſeverall Juries, and like unto one that ſtandeth mute and will not put himſelfe upon the triall of the law.

3 H. 7. 12.

By the ſtatute of 22 H. 8. it was provided that no perſon arraigned for any petit treaſon, murder or felony, ſhall be admitted to any peremptory challenge above the number of twenty: but at this day in caſe of high treaſon, notwithſtanding the ſtatute of 33 H. 8. cap. 22, 23. and petit treaſon, notwithſtanding the Act of 22 H. 8. he may challenge thirty five according to the Common law, for it is enacted by the ſtatute of 1 & 2 Ph. & Mar. cap. 10. that all trials hereafter to be awarded, or made for any treaſon, ſhall be had and uſed only according to the due order and courſe of the Common law, ſo as to Petit treaſon the Act of 22 H. 8. is abrogated, but in caſes of murder and felony he cannot challenge peremptorily above the number of twenty, and if he challenge above twenty,

22 H. 8. c. 14. 32 H. 8. ca. 3. See before *Peine fort & dure* in the next preceding Chapter. See before in the Chapter of Petit treaſon, fo 26.

ty, and under thirty ſix, he forfeiteth not his goods and chattels, for no law giveth forfeiture for challenging above twenty; but the Court ought to over-rule the challenge: neither is he convicted by the challenging above twenty, as he was by the Common law by challenge of three Juries, for the Act of 22 H.8. extendeth not to any conviction, but to the challenge onely.

8 E.2. Forfeit.17. 23 E. contumac. 17.7 H.6.9. 26 H.6.Attachment 4. 28 H.6.9. 34 H.6.29,49. 32 H.6.ibidem 9 H.7.6. Broke Tit.forfeit.4. 3 El.Dier 199. pag.54.

If the party Defendant be attached or diſtrayned by proces out of any Court of Record, County, by force of a Juſticies, &c. hundred Court, or other Court Baron, and make default, the goods or iſſues are forfeited, and upon the attachment the Sheriff or other Officer may take the goods with them: and this is the reaſon that upon the attachment the Sheriff or other Officer ought to return the certainty of the goods and the value, and it is not ſufficient to return that he hath attached or diſtrained the Defendant by goods to ſuch a value, and ſo upon the diſtreſſe the iſſues muſt be returned in certain, becauſe they are upon default to be forfeited.

1. part of the Inſtitutes. § 745.

What a perſon convict of felony before attainder ſhall forfeit: ſee the First part of the Inſtitutes, Sect.745. Verb.Attaint. fo.391.

See Supra in the Chapter of Deodands, and in the Chapter of Wreck, Vid. Stanford Pl.Cor.fo.183,184 &c.

CAP. CIII.

Of the ſeiſure of goods, &c. for offences, &c. before conviction.

1. Vide 25 E.3. ca.14.

REgularly the goods, &c. of any Delinquent cannot be taken and ſeiſed to the Kings uſe, before the ſame be forfeited.

2. The ſame cannot be inventoried, and the Towne charged therewith, before the owner be indicted of Record.

3. It is to be obſerved, that there is two manner of ſeiſures, one verball without taking, removing, or carrying away, onely to make an Inventory, and to charge the Town: And the other an actuall ſeiſure, and taking away the ſame.

26 Aſſ.p.32. 43 E.3.fo.24. 44 Aſſ.p.14. 7 H.4.fo.ultimo. Lib.8.fo.171. See the 1.part of the Inſtitutes. Sect.745.f.391.a. Bract. lib.3.f.123. Britt. fo.4.b. Fleta l.1.c.25,26.

As to the firſt, the ſame is manifeſt by Bracton, and all our ancient Authors: and let Bracton ſpeak for them all.

Priſones impriſonati, antequam convicti fuerint, de terris ſuis diſſeiſiri non debent, [a] nec de rebus ſuis quibuſcunque ſpoliari; ſed dum fuerint in priſona debent de proprio in omnibus ſuſtentari, donec per judicium deliberati fuerint vel condemnati, &c. And fo. 136. he ſaith thus, Qui pro [b] crimine vel felonia magna, ſicut pro [c] morte hominis, captus fuerit & impriſonatus, vel ſub cuſtodia detentus, non debet ſpoliari bonis ſuis, nec de terris ſuis diſſeiſiri, ſed debet inde ſuſtentari donec de crimine ſibi impoſito ſe defenderit, vel convictus fuerit, [d] quia ante convictionem nihil forisfacit; & ſi quis contra hoc fecerit, fiat Vicecom' tale bre. [e] Rex vic' ſalutem. Scias quòd [f] proviſum eſt in curia noſtra corã nobis, quod nullus homo captus pro morte hominis, vel pro alia felonia pro qua debeat impriſonari, diſſeiſietur de terris, tenementis vel catallis ſuis, quouſque convictus fuerit de felonia de qua [g] rectatus eſt, ſed quam citò captus fuerit per viſum cuſtodum placitorum coronæ noſtræ, & per viſum tuum & legalium hominum apprecientur catalla ipſius capti, & imbrevientur, & ſalvo cuſtodiantur per [h] balivos ipſius qui capitur, & qui bonam inveniant ſecurita-

a Nota the generality of theſe words. Hil.29 E.1.Coram Rege in Aſſ. Campions caſe. *b* In this word treaſon is comprehended. *c* Nota Mort del home eſt felonia magna. *d* Note this reaſon extends as well to treaſon, as to felony. *e* This writ is in the Regiſt. *f* That is, by Magna Cart. cap. 29. and that Act extends to treaſon as well as to felony. *g* E.3. cap. 9. Fleta lib. 2.c. 26.accord. *g* Id eſt, indictatus, for before Indictment no verball ſeiſure can be made, or Inventory taken. Stat. de 4 E.1. de offic. Coronatoris, & aliquis culpabilis inveniatur, &c. Britton f. 4. b. accord. *h* So was it in Bractons time, but afterwards the Townſhip was charged, and anſwerable for the ſame, Britton fo.18. Mirror c.2.§.13. Fleta lib.1.c.25,26. 43 E.3.18.2.

tem

tem de reſpondendo coram Juſticiariis noſtris cum ab eis exigantur: ſalvo tamen eidem capto & familiæ ſuæ neceſſariæ, quandiu fuerit in priſona, rationabili eſtoverio ſuo, &c. *i.* rationabili victu & veſtitu. 3 E. 3. Coron. 336. 13 H. 4. 13.

a Note the generality of theſe words.

b Mic. 18 E. 1. Corã Rege Ro. 34. Norff. Niſi quis appellatus indictatus vel cum manu opere captus fuerit, non competit regi ſecta contra ipſum.

By the ſtatute of 1 R. 3. cap. 3. **it is enacted and declared,** That neither Sherif, Eſcheator, Bailife of Franchiſe, [a] nor other perſon take or ſeiſe the goods of any perſon arreſted, or impriſoned, before he be convicted or attaint of the felony, [b] according to the law of England, or before the goods be otherwiſe lawfully forfeited, upon pain to forfeit double the value of the goods ſo taken to the party grieved.

So as (ſuper tota materia) **theſe two concluſions are manifeſtly proved. Firſt, that before Indictment, the goods or other things of any offender cannot be ſearched, inventoried, or in any ſort ſeiſed; nor after Indictment ſeiſed, and removed, or taken away before conviction or Attainder. Secondly, that the begging of the goods or ſtate of any Delinquent accuſed or indicted of any treaſon, felony, or other offence before he be convicted and attainted, is utterly unlawfull, becauſe before conviction and attainder, as hath been ſaid, nothing is forfeited to the King nor grantable by him. And beſides it either maketh the proſecution againſt the Delinquent more precipitate, violent, and undue, then the quiet and equall proceeding of law and juſtice would permit, or elſe by ſome underhand compoſition and agreement ſtop or hinder the due courſe of juſtice for exemplary puniſhment of the offender. And laſtly, when the Delinquent is begged, it diſcourageth both Judge, Juror, and witneſſe to doe their duty.**

Begging of lands and goods before conviction, &c. unlawfull.

It was an Article of Inquiry, De hiis qui aliquid agunt per quod veritas & juſtitia ſuffocantur.

Cap. Itineris.

See Lib. 7. f. 36, & 37. **the caſe of penall ſtatutes,** & nota bene: **See alſo the ſtatute of** 21 Jac. ca. 3. à fortiori **in caſe of life.** Placitum coronæ **ought not to become in effect** placitum privatum. **And if it fall out that the party accuſed be** legitimo modo acquietatus, **let ſuch as begge him and proſecute againſt him be terrified by the villanous judgement againſt Conſpiratours, which you may read before** cap. **Judgements and Execution.**

CAP. CIV.

Of Falſifying of Attainders.

Syers caſe, Anno 32 Eliz.

AT Twelfe Seſſions of the Peace holden at Norwich for the County of Norfolk, Anno 32 Eliz. one Syer was indicted of Burglary, ſuppoſed to be committed 1 Auguſti Anno 31 Eliz. whereunto Syer pleaded not guilty. And upon the evidence it appeared that the burglary was committed 1 Septemb. Anno 31 Eliz. ſo as at the time alledged in the Indictment there was no burglary done: and it was conceived that the very true day in the Indictment was neceſſary to be ſet down in the Indictment, for that the judgement doth relate to the day in the Indictment, and ſo avoid Feoffements, Leaſes, &c. for that (as it was alſo conceived) the feoffee, leſſee, &c. when the attainder is upon a verdict, ſhould not falſifie in the time of the felony: and thereupon the Jury found Syer not guilty. And at the ſame Seſſions Syer was again indicted for the ſame burglary done 1 Septembris Anno 31 Eliz. when in truth it was done. And he that gave the charge at that Seſſions doubted, whether upon this matter Syer might plead Auter foitz acquite for the ſame burglary, (for ſeeing the offender is allowed no counſell, the Court ought to do him juſtice and aſſigne him counſell in favorem vitæ, though he demand it not, to plead any matter in law appearing to the Court for his diſcharge;) and thereupon he ſtayed the proceeding againſt him, and the Aſſiſes being at hand he acquainted the Juſtices of Aſſiſe, Wray Chief Juſtice, and Juſtice Periam with this caſe, and with the doubts conceived thereupon; who anſwered him, that the like caſe had then been lately propounded by Juſtice Periam to all the Juſtices of England; and by them three points were reſolved. 1. That the Crown was not bound to ſet down the very day when the treaſon, felony, &c. was done, but the day ſet down in the Indictment being before or after the offence done, the Jury ought to finde him guilty, if the truth of the caſe be ſo; and if it be alledged before the offence done, to finde the day when it was done in rei veritate, for they are ſworn ad veritatem dicendam, and then the forfeiture ſhall relate but to the day in the verdict, which was the day of the offence done, and not to the day in the indictment. 2. That if the triers finde the offender guilty generally, yet the feoffee or leſſee, &c. if the offence be alledged in the indictment before it was done to their prejudice, may falſifie in the time, but not for the offence. For ſeeing the Crown is not bound to ſet down the very juſt day when the treaſon or felony, &c. is done, and that the Triers have chief regard and reſpect of the offence it ſelfe, God forbid, but that the Subject might falſifie as concerning the time of the offence. 3. If the offender be found not guilty, he in that caſe might plead upon a new indictment, Auterfoitz acquite: and ſo Syer in the caſe aforeſaid did, and was thereupon diſcharged according to the ſaid reſolutions. Nota three notable points reſolved, that never were reſolved in any Book that we have read, and remember.

At the Aſſiſes in Lent, 32 Eliz. in Com. Norff.

Nota, The reſolution of all the Judges.

49 E. 3. 11. 7 E. 4. 1, 2.

If a man infeoffeth another of his land, and after is indicted of a felony ſuppoſed to be committed before the feoffment, and thereupon he is outlawed; the party himſelfe is bound hereby, and cannot traverſe the felony, but the feoffee, &c. may, becauſe he is an eſtranger thereunto: for a falſe indictment without any tryall by verdict ſhall not binde the feoffee, &c. but that he may falſifie, either by traverſe of the felony it ſelfe, or of the time of the feoffement.

And

And so it is if a man maketh a feoffement of his land, and after taketh Sanctuary, and confesse the felony before the Coroner by him to be done before the feoffement, and abjureth the Realm; the feoffee shall falsifie the attainder by traversing of the felony. And so it is if a man be indicted of felony, and is attainted by his own confession, the feoffee shall falsifie the attainder by denying the felony. But otherwise it is if he be attainted upon a verdict given by twelve men for then the feoffee shall not falsifie by traversing of the offence, but of the time onely.

11 H.4.49. 2 H.5.Estop 91. 7 E.4.1,2. Vid.Rot.Parl. 23 H.6.nu.32.

Where the case in effect is, that 19 Januarii Anno 1 Mariæ, a Commission of Oier and Terminer in London was directed to Sir Thomas White the Lord Maior of London, and to divers others, reciting, that where Sir Robert Dudley Knight, 9 Januarii Anno 1 Mariæ was indicted of High Treason before Thomas Duke of Norff. and 14 others Commissioners of Oier and Terminer in the County of Norff. (where in truth that Commission was directed to so many, but the indictment was taken but before 8 of them onely) granting to them or any 4 of them, authority to receive the indictment taken before 15 Commissioners, and to proceed thereupon as speciall Justices of Oier and Terminer, &c. By pretext whereof they proceeded: and upon the confession of the said Sir Robert Dudley, gave judgement against him in case of High Treason. [a] In this case it was adjudged, that Sir Robert Dudley, then Earl of Leic. might falsifie the said attainder by plea, because it was void, and Coram non judice; for that the said latter Commissioners [b] had no power to proceed upon an Indictment taken before 8, but before 15, and so the judgement was void, and coram non Judice: for wheresoever the judgement is void, or coram non judice, the party is not driven to his Writ of Error, but may falsifie the attainder by plea, shewing the speciall matter which proveth it void, or coram non judice. In which case the party forfeiteth neither lands nor goods. By which case it appeareth how necessary it is for Judges, especially in cases of Treason and Felony, to look into the whole Record, and the proceedings thereupon, before they give judgement, lest they give an unlawfull and unjust judgement, by means whereof the party may lose his life, &c.

Pl.com.f.390. Le Countee de Leic.case.

a Tri.3 El.
b V. for this point 22 Ass.p.64. 39 E.3.33,34. 41 Ass.p.ult. 27 Ass.p.55. 39 Ass.p.6. 7 H.4.3.9H.4.1. 10 H.6.13. 36 H.6.22. 31 H.6.10. 4 H.6.24. 22 E.4.31 Colyns case. 2 H.3.10. 4 H.7.18. 2 H.7.fo.

[c] A and B were indicted, A as principall of felony, and B as accessory for receiving him. A fled and was attainted of the felony by outlawry. B the accessory (being seised of lands in fee holden of C) was arraigned upon the indictment and found guilty by verdict, and had judgement, and was hanged: C the Lord entreth as Lord by Escheat: A the principall reverseth the Outlawry, and to the felony pleaded not guilty, and by verdict was found not guilty, and thereupon was by judgement acquited. The heir of B brought an Assise of Mordancestor against C the Lord by Escheat, who pleaded the outlawry of the principall, and the attainder of the accessory, his seasin in fee, and the execution, and his entry as Lord by Escheat. [d] The plaintife shewed the reversall of the outlawry by the principall and his acquitall by verdict and judgement, whereupon the Lord demurred in judgement. And it was adjudged that the plaintife in the Writ of Mordancestor should recover against the Lord by Escheat. Upon which judgement we observe these five conclusions. 1. [e] That the attainder of the accessory hath a kinde of dependency upon the attainder of the principall. For it is a Parime in Law, That the accessory ought not to be put to answer before the principall be attainted; and by the reversall and acquitall of the principall, the dependent judgement against the accessory cannot stand. 2. [f] That this attainder of the accessory may be falsified and avoided by the heir by plea, and is not driven to his Writ of Error; for that the attainder of the accessory is by matter in law avoided by Record of as high nature as the attainder of the principall was. For in this case it is impossible that there should be an accessory where there was no principall, of the same felony. 3. That the Escheat of the land lawfully once vested shall by this matter ex post facto, be devested. 4. Though there were no immediate descent to the heir, yet upon the judgement of the acquitall of the principall the Writ of Mordancestor was maintainable. Lastly, that albeit the attainder of the accessory is avoided by judgement of law, yet the

Mountgom.Bogo de Knovil. &c.
c See this case temps E.1.tit. Mordanc.46. but not fully there. reported. Vid.lib.9.fo.119. Lord Zanchers case.
d Where the ancestor of the accessory was lawfully and in due form attainted of felony, and yet the heire is all inherit by matter *ex post facto*.
e V.li.5.fo.119.b. Lo. Zanchers case Debili fundamento fallit opus.
2 R.3.fo.12.
f 16 E.3.57. 7 H.6.44. 43 E.3.3. 4 E.3.36. 11 H.4.46. 9 H.6.38.b. 8 H.4.4. 10 H.6.6. 6 E.4.8. 8 H.7.10. 13 E.4.4.

18 E.4.9.b. Lord by Eſcheat remain tenant of the land, untill it be evicted from him by action or entry. And ſo it is if the principall be attainted of felony, and after the acceſſory is alſo attainted, if the principall reverſeth his attainder by Writ of Error, the attainder of the acceſſory dependant thereupon is reverſed.

Dier 20 Eliz. 135 lib.6.fo.13.14. in Arundels caſe. A man commits treaſon or felony, and is thereof attainted in due form of law, and after this treaſon or felony is pardoned by a generall pardon; hereby the foundation it ſelfe, viz. the treaſon or felony being by Authority of Parliament diſcharged and pardoned, the attainder (being builded thereupon) cannot ſtand, but may be falſified and avoided by plea, for he hath no other remedy by writ of Error or otherwiſe.

In the County of Warwick there were two brethren, the one having iſſue, a daughter, and being ſeiſed of lands in fee deviſed the government of his daughter and his lands, untill ſhe came to her age of ſixteen years, to his brother, and died. The Uncle brought up his Niece very well both at her Book and Needle, &c. and ſhe was about eight or nine years of age: her Uncle for ſome offence correcting her, ſhe was heard to ſay, Oh good Uncle kill me not. After which time the childe after much inquiry could not be heard of: Whereupon the Uncle being ſuſpected of the murder of her, the rather for that he was her next Heir, was upon examination Anno 8 Jac. Regis committed to the Gaol for ſuſpicion of murder, and was admoniſhed by the Juſtices of Aſſiſe to finde out the Childe, and thereupon bailed him untill the next Aſſiſes. Againſt which time, for that he could not finde her, and fearing what would fall out againſt him, took another child as like unto her both in perſon and years as he could find, and apparelled her like unto the true child, and brought her to the next Aſſiſes, but upon view and examination, ſhe was found not to be the true child; and upon theſe preſumptions he was indicted, found guilty, had judgement, and was hanged. But the truth of the caſe was, that the Child being beaten over night, the next morning when ſhe ſhould go to ſchoole ran away into the next County: and being well educated was received and entertained of a ſtranger: and when ſhe was ſixteen years old, at what time ſhe ſhould come to her land, ſhe came to demand it, and was directly proved to be the true child. Which caſe we have reported for a double caveat: firſt to Judges, that they in caſe of life judge not too haſtily upon bare preſumption: and ſecondly, to the innocent and true man, that he never ſeek to excuſe himſelf by falſe or undue means, leſt thereby he offending God (the author of truth) overthrow himſelf, as the Uncle did.

Falſifying concerning goods.

Bract. lib.3.f.128, 129.a. Brit. ca.12. fol.20. 3 E.3. forfeit 25. 22 Aſſ.96. 13 H.4.13. *a* 4.H.7.18. *b* 3 E.3.cor.296. & 344. *c* 47 E.3.26. 13 E.4.fo.8.a. Travers de chattell al common ley. *d* 27 Aſſ.p.50. 41 Aſſ.p.13. 44 Aſſ.p.16. Lib.5.fo.111. Foxleyes caſe. *e* Bra.li.3 f.129.a. 43 E.3.18. 7 E.4.17.a. *p* Cheke. 45 Aſſ. p.9. Stanf. pl. cor.284.d.

If A be indicted before the Coroner for the death of another, and that A fled for the ſame; hereby are all the goods and chattels of A forfeited which he had at the time of the verdict given; and this cannot be falſified by traverſe. For if the party be arraigned upon the ſame indictment before Juſtices of Gaol delivery, and is by verdict acquitted of the felony, and that he did not flee for the ſame; yet he ſhall forfeit his goods and chattels, but yet [a] ſuch a fugam fecit may be falſified by matter in law; for if the indictment be void or inſufficient, there is no forfeiture. [b] But if a man be indicted before Juſtices of Oier and Terminer, and is acquited by verdict; and they finde further that he fled for the ſame, his goods are forfeited which he had at the time of the verdict given; [c] and it being alſo found in particular what goods he then had, that may be traverſed by any that had property in thoſe goods.

There is alſo a fugam fecit in law. [d] As if a man be indicted or appealed of felony and Proces continued againſt him, upon his default of appearance, and an Exigent awarded againſt him, whereupon he appeareth, albeit he be after acquited of the felony, yet all his goods and chattels are forfeited by the awarding of the Exigent upon this fugam fecit in law. [e] But this may be falſified by matter in law: for if the Indictment or Writ of Appeal be inſufficient, or error be in the Proces or Exigent, the ſame may be avoided by exception, and no forfeiture of goods. And there is no Book to warrant the opinion of Juſtice Stanford

ford in this caſe: for in 43 E. 3. the originall Writ was good, Quod adnoto, non ut arguam, ſed ne ipſe arguar. And alſo by matter in deed or Record he may excuſe his abſence, as if he were in priſon or beyond the ſea, at the time of the Exigent awarded, or if the King before the Exigent doth pardon him. 30 H. 6. tit. forfeit. 31, 19 E. 3. ibid. 19. 223. 45 E. 3. Aſſ. 9.

A. is indicted of Petit Larceny, and upon his triall is found not guilty, and that he did flye for the ſame, he ſhall forfeit his goods. And ſo it is if an Exigent be upon ſuch an Indictment awarded againſt him: but he may falſifie the ſame to free him of the forfeiture of his goods by ſuch means as is aforeſaid. See the firſt part of the Inſtitutes. Sect. 745. fol. 391. a. 8 E. 2. cor. 406.

Hæ leges vitam veſtram (generoſa Juventus)
Inſtituunt, quæ ſunt fugienda, ſequendaq; monſtrant.

CAP. CV.

Of Pardons.

WE have ſpoken of the royall and eſtabliſhing vertue of Juſtice: royall and eſtabliſhing I ſay, becauſe Juſtitia firmatur ſolium, by Juſtice the Royall Throne is eſtabliſhed. We are now to ſpeak of his Mercy: for the ſame Holy Spirit ſaith: Miſericordia & Veritas cuſtodiunt Regem, & roboratur Clementia Thronus ejus. Mercy and truth preſerve the King, and by clemency is his Throne ſtrengthened. And hereupon is the law of England grounded. Non ſolum ſapiens debet eſſe Rex, ſed & miſericors, ut cum ſapientia miſericorditer ſit juſtus, &c. Quibus tamen & qualiter eſt miſerendum, doceant eum merita vel immerita perſonarum, &c. Of this Royall vertue we ſhall ſpeak the more willingly, for that (as it hath appeared before in the Chapter of Sanctuary) all Sanctuaries and places of Refuge for ſafeguard of life are taken away. And where Bracton in the ſame place ſpeaking of the Kings mercy ſaith, Nihil itam proprium eſt imperii quam legibus vivere, it is to be obſerved, that the lawes of this Realm have in ſome ſort limited and bounded the Kings mercy, as ſhall appear hereafter. And for as much as his mercy is conveyed unto his Subjects by his pardons, we ſhall now ſpeak thereof, being led thereunto, by the Book in 9 E. 4. where it is holden A cheſcun Roy appent per reaſon de ſon office a faire juſtice & grace; juſtice in execution des leyes, &c. & grace de granter pardons, &c. Prov. 16. 12. Prov. 20. 28. Bract. lib. 2. fo. 9 E. 4. 2. a.

[a] A Pardon is a worke of mercy, whereby the King either before attainder, ſentence, or conviction, or after, forgiveth any crime, offenſe, puniſhment, execution, right, title, debt, or duty, Temporall or Eccleſiaſticall: [b] All that is forfeited to the King by any attainder, &c. he may reſtore by his Charter: but if by the attainder the blood be corrupted, that muſt be reſtored by authority of Parliament.

We call it in Latin Perdonatio, and derive it à per & dono: per is a Præpoſition, and in the Saxon tongue is for or vor: as to forgive is throughly to remit, and * forethink is to repent, and forbear is to bear with patience, as it is ſaid, Leve eſt ferre, perferre grave.

[c] All pardons of Treaſon or Felony are to be made by the King, and in his name onely, and are either generall or ſpeciall. All pardons either generall or ſpeciall are either by Act of Parliament (whereof the Court in ſome caſes ſhall take notice) or by the Charter of the King, (which muſt alwayes be pleaded.) And theſe againe are either abſolute, or under condition, exception, or qualification: for

a Seneca lib. de Clementia, ca. 24. Remiſſius imperanti melius paretur.

b See the firſt part of the Inſt. Sect. 1, fo. 8. & Sect. 646. 647. See after cap. Reſtitution.

* Rot. Par. 17 R. 2 nu. 11, &c.

c 27 H. 8. cap. 4. Hil. 29 E. 1. coram Rege Heref. Jo. fil. Philippi Perpoint. 1 H. 4. fo. 37. 17 H. 6. proteſt. 57.

for ſome of thoſe pardons laſt mentioned the party may have a writ of allowance, or take an averment in certaine caſes, in others the party may be aided by averment onely, where no writ of allowance doth lie.

11 H.4.fol.41. 28 H.8. Dier 28. 3 Mar.ibid.200. 26 H.8.fol.7. There is a very generall and abſolute pardon. Rot.Parl.15 H.6. nu.31. 33 H.6. nu. 29. &c.

And firſt of generall pardons. Generall pardons are by Act of Parliament, if any of theſe pardons be generall and abſolute, the Court muſt take notice of them, though the party plead it not, but would waive the ſame. But in theſe dayes the generall pardons have ſo many qualifications and exceptions of offences and things, and of perſons alſo, that the Court cannot take notice of them, neither can the party take benefit or advantage thereof, unleſſe he plead it: And for that it may concern the ſafety and quiet of many a Subject, we have expreſſed the forme of the pleading of a generall pardon, and have ſet it down here in latin: but if the offence be objected in the Star-chamber, or any other Engliſh Court, then it muſt be pleaded in Engliſh.

* This is put but for an example, but care muſt be taken, that what generall pardon ſoever be pleaded the firſt clauſe of the pardon of diſcharge, &c. be truly alledged. For the expoſition of generall words, See L.5. fo.47. Littletons caſe. Ibid.fo.46. Frandlyns caſe. Ibid.fo.48. Drywoods caſe. Ibidem 49. b. Witrals caſe. Lib.6.fo.79,80. Sir Edw.Fittons caſe. Li.6.f.13.b. Li.Kelw.8 H.8. 187. Ibid.10 H.8. fo.198.a.ter.

Et præd' A. per B. Attornatum ſuum venit, &c. (or in propria perſona) Et dicit quod dominus Jacobus rex nunc ipſum A. occaſione præmiſſa impetere ſeu occaſionare non debet: quia dicit, quòd per quendam Actum in Parliamento dicti domini regis nunc tent' apud Weſtm' in com' Mid' nono die Februarii anno regni ſui ſeptimo, inter alia, inactitat' & ſtabilitum exiſtit authoritate ejuſdem Parliamenti, * quòd omnes & ſinguli ſubditi dicti domini regis tam ſpirituales, quam temporales hujus regni Angliæ, Walliæ, Inſularum Jernſey, & Garnſey, & villæ Barwic. hæredes, ſucceſſores, executores, et adminiſtratores ſui, & eorũ quilibet, ac omnia & ſingula corpora aliquo modo corporata, civitat', burgi, comitat', Riding, Hundred, Lath, Rape, Wapentag', vill', villat', Hamlet' & Tithing, & eorũ quilibet, ac ſucceſſor, & ſucceſſores eorum, & cujuſlibet eorum authoritate ejuſdem Parliamenti acquietarentur, perdonarentur, relaxarentur, & exonerarentur verſus dictum dominum Regem, hæredes et ſucceſſores ſuos, & quemlibet eorum de omnibus proditionibus, feloniis, offenſis, contempt', tranſgreſſ', intrationibus, injuriis, deceptionibus, malegeſturis, foriſfacturis, penalitatibus, & ſummis pecuniæ, pœnis mortis, pœnis corporalibus, & pecuniariis, & generaliter de omnibus aliis rebus, cauſis, querelis, ſectis, judiciis, & executionibus in prædicto Actu non exceptis, neque forpris', quæ per ipſum dominum regem aliquo modo, ſeu per aliquem modum perdonari potuerunt ante & uſque nonum diem Novembris tunc ultim' præterit' ante editionem Actus prædicti, cuiliber, aut alicui ſuorum ſubditorum, corporum corporat', civitat' burgorum, comitat', Riding, Hundred, Lath, Raparum, Wapentag', villæ, villat', & Tithing, vel aliquorum aliorum prout in Actu prædicto plenius continetur. Et idem A. dicit quòd * offenſa prædicta verſus ipſum in forma prædicta objecta non eſt in Actu prædicto excepta, neque forpriſata. Et quòd ipſe eſt & tempore editionis Actus prædicti fuit ſubditus & ligeus dicti domini regis nunc natus ſub obedientia ſua, videlicet apud Weſtm' prædict', quodque ipſe non eſt aliqua perſona in Actu prædict' excepta', neque forpriſat'. Et hoc paratus eſt verificare, unde non intendit quòd dictus dominus rex nunc ipſum A. occaſione præmiſſa impetere ſeu occaſionare velit, unde petit judicium. Et quòd ipſe de præmiſſis prædict' exoneraretur, & quòd generalis pardonatio prædicta ei allocatur, &c. See before cap. of Falſifying of Attainders.

* These avermentes (as you perceive) may be take without any writ of allowance. 8 E.4.3. 4 H.7.8. Lib.8.fol.68. Trollops caſe.

By the generall pardon of 28 El. all felonies are pardoned, Burglary excepted. Hil.29 El. it was reſolved by all the Juſtices, that a man being attainted of Burglary was excepted, for the Burglary remains, and is made more apparent by the attainder, and the offence of Burglary is the foundation.

Vid.lib.6.fol. 13, 14. in Arundels caſe. A caſe of Burton.

Hil.29 El. the reſolution of all the Juſtices.

The moſt beneficiall generall pardons for the ſubject were thoſe of the firſt, and thirteenth years of the reign of Queen Elizabeth, as by compariſon of thoſe with others, will to the judicious Reader eaſily appear. The beſt generall pardon in all King James time, was that of the 21 year of his reign, as by compariſon of that with any of his former, will evidently appear, and were too long here to be rehearſed.

Hil.26 E.3. Corã Rege Rot.21. Wiltes.

And now of particular pardons. No particular pardon, be it at the Coronation, or any other, of any offence or offences whatſoever, that is abſolute without

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any condition, &c. need any writ of allowance, but when the pardon is conditionall by force of the Act of 10 E. 3. cap. 2. there a writ of allowance out of the Chancery teſtifying that the condition is performed, viz. ſurety found according to that Act, may be had, or the party may plead the finding of ſurety, &c. and vouch the record.

3 H. 7. 7. a. this ſtatute expounded and this Act extend to felony, and not to treaſon.

The moſt large and beneficiall pardons by Letters Patents, that we have read, and do remember, were that to William Wickham Biſhop of Winchester (for good men will never refuſe God and the Kings pardon, becauſe every man doth often offend both of them) and that other to Thomas Wooliey Cardinal, which are learnedly and largely penned.

Rot. Par. 21 Julii Anno 1 R. 2. Rot. Par. 12 Feb. 21 H. 8. great offences need great pardons, little offences are ſoon forgiven.

But let us turn our eye to ancient Charters of pardon, & conſider well of them.

Edwardus Dei gra tia Rex Angliæ, Dominus Hiberniæ, & Dux Aquit', Omnibus balivis & fidelibus ſuis, ad quos præſentes lîræ pervenerint, Salutem. Sciatis quòd pro bono ſervitio quod Johannes Chaumprona de Thornton in Pickerings, in portibus Scotiæ nobis impendit, perdonavimus ei ſectam pacis noſtræ, quæ ad nos pertinet * pro morte Iſabellæ, quondam uxoris ſuæ, unde indictatus eſt, & firmam pacem noſtram ei inde concedimus. Ita tamen quod ſtet recto, ſi quis verſus eum inde loqui voluerit. In cujus rei teſtimonium has literas noſtras fieri fecimus patentes. Teſte me ipſo apud Roukesburge, nono die Febr. anno regni noſtri triceſimo.

Hil. 29 E. 1. Coram Rege Hereford. Johannes fil. Ph. Perpoint, &c.

* It appeareth by the Record that he killed her per infortunium.

Edwardus Dei gratia Rex Angliæ, Dominus Hiberniæ, & Dux Aquitan', Omnibus balivis & fidelibus ſuis ad quos præſentes literæ pervenerint, Salutem. Sciatis quod pro bono ſervitio qnod Galf. filius Warnum in partibus Scotiæ impendit, perdonavimus eidem Galfro ſectam pacis noſtræ quæ ad nos pertinet, de homicidiis, roberiis, latrociniis, fractionibns domorum, feloniis & aliis tranſgreſſionibus contra pacẽ nr̃am in regno nr̃o factis, unde indictatus eſt, & ſimiliter tranſgreſſionem quam fecit ab Eccleſia de Watford, in qua aliquamdiu pro timore inimicorum ſuorum ſe tenuit fugiendo, & ſe ſecundum legem & conſuetudinem regni noſtri Juſticiar' non permittendo, & etiam utlagariam, ſi qua in ipſum ea occaſione fuerit promulgata, & firmam pacem noſtram ei inde concedimus. Ita tamen quod ſtet recto in curia noſtra, ſi quis verſus eum loqui voluerit de homicidiis, roberiis, latrociniis, fractionibus, feloniis & tranſgreſſionibus prædictis. In cujus rei teſtimonium has literas noſtras fieri fecimus patentes. Teſte me ipſo apud Linũſcu viceſimo ſecundo die Januarii anno regni noſtri triceſimo, per breve de privato ſigillo.

Delib. Garolæ de Windeflore; coram Hugone de Braund, & Johanne Neprunt die Jovis proxim' poſt clauſ. Paſc. Anno 25 E. 1.

It appeareth by this record, that the ſaid Jeffry was indicted for the death of a man, and of divers Burglaries and Felonies, and being thereupon arraigned prayed his Clergy, ſed ſalvo ſibi privilegio clericali poſuit ſe ſuper patriam, and was found not guilty, &c. in the proceeding whereof there was manifeſt error, and obtained the pardon. Herein divers things are obſervable: Firſt, that the pardon is de * homicidiis, and not de murdris, neither have we ſeen any pardon of murder by any King of England by expreſſe name. Secondly, by theſe ancient words the King doth pardon ſectam pacis noſtræ, quæ ad nos pertinet de homicidiis, &c. & firmam pacem noſtram ei inde concedimus. This ſecta pacis is by Indictment, which is the Kings ſuit, and, as it were, his declaration. Thirdly, that the King of ancient time did not pardon homicidium, &c. but ſectam pacis noſtræ quæ ad nos pertinet de homicidiis, &c. yet when he pardoned, and releaſed the ſuit or mean, viz. ſectam pacis, &c. the offender was diſcharged of the homicide it ſelf, in diebus illis, but at this day the offence it ſelf is pardoned, which is the ſureſt way.

*For this word Homicide ſee in the Chapter of Murder. See Hil. 31 E. 3. Coram Rege Rot. 7. Northumb. 9 E. 4. 28.

8 H. 4. fo. 22. Lib. 6. fo. 13. b.

The King brought an action of debt upon an obligation, the Defendant pleaded non eſt factum, and at a Niſi prius it was found the deed of the Defendant; and before the day in bank, the King pardoned the Defendant all debts, querels, &c. and after the King had judgement, and ſued out execution, and the Defendant came and plead the pardon, and it was adjudged that in the Kings caſe, he might plead the ſame, though he had no day in Court, becauſe he could not have an Audita querela, or a Scire fac' againſt the King, and there-

34 H. 6. 3. a. 35 H. 6. 1. a. 11 H. 7. 10. Li. 6. f. 79. l. 8. 68. Lib. Keylw. 8 H. 8. fo. 187. 2 R. 2. 4. b. ſimile

fore

* Pl.Com f.401. Coles caſe. 37 H.6.fo.21 Quattermains caſe. Li.5.fo.49. Vaughans caſe. Li.6.fo.13. *Caſes de pardon.* 20 El.Dier 135. Exod.21.12,13, 14. Deut.19.13. *Non miſereberis ejus,&c.*

ſore if he could not plead it, he ſhould be without remedy, but againſt a common perſon he could not plead it, becauſe he ought to have an Audita querela, or a Scire fac'. And in this caſe it is obſervable, that albeit by the judgement a new title to the ſaid debt is accrewed to the King of Record after the pardon, the obligation at the time of the pardon being but a matter in fact, yet for that the obligation was the * foundation of the debt, and the matter whereupon judgement was given, and by the pardon the debt due by the obligation was extinct, the judgement thereupon cannot bind, but is to be avoided by pleading the pardon.

What things the King may pardon, and in what manner, and what he cannot pardon, falleth now to be treated of.

[a] In caſe of death of man, robberies, and felonies againſt the peace, divers Acts of Parliament have reſtrained the power of granting Charters of pardons. Firſt, that no ſuch Charters ſhall be granted but in caſe where the King may doe it by his oath.[b] Secondly, that no man ſhall obtain Charters out of Parliament, and accordingly in a Parliament Roll it is ſaid; [For the peace of the Land it would much help, if good Juſtices were appointed in every County, if ſuch be let to mainprize do put in good ſureties, as Eſquires or Gent. and that no pardon were granted but by Parliament.] Thirdly, for that the King hath granted pardons of felonies upon falſe ſuggeſtions,[c] it is provided, that every Charter of felony which ſhall be granted at the ſuggeſtion of any, the name of him that maketh the ſuggeſtion ſhall be comprized in the Charter, and if the ſuggeſtion be found untrue, the Charter ſhall be diſallowed. And the like proviſion is made by the ſtatute of 5 H.4. cap.2. for the pardon of an Approver.

[d] Fourthly, it is provided that no Charter of pardon for murder, treaſon, or rape, ſhall be allowed, &c. if they be not ſpecified in the ſame Charter.

Before this ſtatute of 13 R.2. by the pardon[e] of all felonies, treaſon was pardoned, and ſo was murder, &c.[f] At this day by the pardon of all felonies, the death of man is not pardoned. Theſe be excellent laws for direction, and for the peace of the Realm.[g] But it hath been conceived, (which we will not queſtion) that the King may diſpenſe with theſe laws by a non obſtante, be it generall or ſpeciall, (albeit we find not any ſuch clauſes of non obſtante, to diſpenſe with any of theſe ſtatutes, but of late times) Theſe ſtatutes are excellent inſtructions for a religious and prudent King to follow, for in theſe caſes, Ut ſummæ poteſtatis regis eſt poſſe quantum velit, ſic magnitudinis eſt velle quantum poſſit. Hereof you may read more in Juſtice Stanford, lib.2.cap.35. in divers places of that Chapter, of his grave advice in that behalfe. Moſt certaine it is, that the Word of God hath ſet down this undiſputable generall rule,[h] Quia non profertur cito contra malos ſententia, filii hominum ſine timore ullo perpetrant mala. And thereupon the rule of law is grounded,[i] Spes impunitatis continuum affectum tribuit delinquendi. Et veniæ facilitas incentivum eſt delinquendi. This is to be added, that the intention of the ſaid Act of 13 R.2. was not that the King ſhould grant a pardon of murder by expreſſe name in the Charter, but becauſe the whole Parliament conceived, that he would never pardon murder by ſpeciall name for the cauſes aforeſaid, therefore was that proviſion made, which was (as in other caſes I have obſerved) grounded upon the law of God, Quicunque effuderit humanum ſanguinem, fundetur ſanguis illius; ad imaginem quippe Dei creatus eſt homo. Nec aliter expiari poteſt, niſi per ejus ſanguinem, qui alterius ſanguinem effuderit. And the words of every pardon is after the recitall of the offence, Nos pietate moti, &c. See before in the Chapter of Murder, and in the Second part of the Inſtitutes, Stat.de Glouc.ca.9. and the Regiſter fo.309. pardon of the King, De morte per infortunium, ſe defendendo, vel per lunaticum, vel per furioſum.

[a] 2 E.3.c.2. 14 E.3.ca.14. 10 E.3.ca.2.
[b] 2 E.3.c.2. 4 E.3.ca.13. Rot.Par.13 E.3. nu. 0.
[c] 27 E.3.c.2. Trin.30 E.1. Rot.2.Coram Rege London, Anno 29 E.1.A pardon of death, ad inſtantiam Johan.Burecourt Mic.33 E.1.Coram Rege Ro.65. a pardon ad requiſitionem H. de Bohun.Count. Heref.& Eſſex.
[d] 13R.2.ſta.2.c.1. 16 R.2.cap.6. 9 E.4.fo.26.b.
[e] 1 E.3.f.24.
[f] 8 H.6.20. 4 E.4.fo.10.
[g] Li.6.fo 15. o E.4.26.b.per Billing Chief Juſtice.
[h] Eccleſ.8.11.
[i] Regula. Maledictus eſt qui peccat ſub ſpe.

Geneſ.9.6. Num.35.33.

Bract.l.3.f.132. By the ancient and conſtant rule of law, Non poterit Rex gratiam facere cum injuria & damno aliorum: quod autem alienum eſt, dare non poteſt per ſuam grattam.

In

In an appeale of death, robbery, rape, &c. The King cannot pardon the Defendant, for the Appeal is the ſuit of the party, to have revenge by death: and whether the Defendant be attainted by Judgment, &c. Or by outlawry, the pardon of the King ſhall not diſcharge the Defendant. * In an Appeal, the Defendant wages battell, the Plaintif counterpleads, for that the Defendant brake priſon, if the King pardon the breaking of priſon, the counterplea faſles. Note the breaking priſon is a collaterall act: and yet in divers caſes at the onely ſuit of the party, when the Defendant either by the Common law, or by any ſtatute (beſides the reſtitution, or dammage of the Plaintif) is thereby alſo to have an exemplary puniſhment, the King may pardon the ſame. For example, In an attaint by A. againſt the party, and the Petit Jury; againſt the party to have reſtitution, this the King cannot pardon: againſt the petit Jury, by the Common law that they ſhould loſe liberam legem, their wives, and children caſt out of their houſes; their houſes waſted, their trees proſtrated, their Meadows ploughed up, their goods and chattels ſeiſed, and their bodies taken, this the King may pardon, becauſe it is a puniſhment exemplary to deter others, and tendeth not to the reſtitution or ſatisfaction of the Plaintif.

11 R. 2. Chr. 17. 2 R. 3. fo. 8. See 4 Mariæ Dier 132. * 2 E. 3. Cor. 134. 13 E. 4, 5. 2.

Now to take an example upon a ſtatute. De pueris maſculis ſive fœmellis (quorum maritagium ad aliquem pertineat) raptis & abductis, ſi ille qui rapuit non habens jus in maritagio, licet poſtmodum reſtituat puerum non maritatum, vel de maritagio ſatisfecerit, puniatur tamen pro tranſgreſſione per priſonam duorum annorum. In this caſe the party being ſatisfyed, the King may pardon the impriſonment by two years, for that was added as a puniſhment exemplary, puniatur, &c. And this doth notably appeare by a Charter of pardon which King E. 2. made after this ſtatute. Rex de gratia ſua ſpeciali perdonavit Goditham, quæ fuit uxor Roberti de Waldiſch, id quod ad ipſum pertinet, de tranſgreſſione quam ipſa Goditha fecit Agathæ, quæ fuit uxor Johannis de Waldiſch de Ellam, rapiendo & abducendo Johannem fil' & hæredem Johannis de Waldiſch infra ætatem exiſtentem, cujus maritag' ad ipſam Agatham pertin' unde ipſa Goditha coram domino E. quondam rege Angliæ patre ipſius regis convicta fuit, & per conſiderationem Cur' dicti patris priſonæ adjudicata per biennium ibidem moratura, & etiam tempus impriſonamenti quod adhuc reſtat de biennio prædicto. Ideo vult idem Rex quod præfata Goditha * de eo quod ad ipſum pertinet pro tranſgreſſione prædicta ſit quieta, & quod à priſona prædicta, ſi pro eo quod ad ipſum regem inde pertinet, & non alia de cauſa detineatur in eadem, deliberetur. Teſte Rege apud Weſtm' 8. die Maii anno regni ſui primo. Ideo ipſa Goditha inde quieta quoad hoc, quod ad dominum regem inde pertinet, &c.

W. 2. ca. 35. Anno 13 E. 1. Paſch. 34 E. 1. Coram Rege Rot. 30 Kanc. in Raviſhment de gard. See the Firſt part of the Inſtitutes. W. 2. ca. 35. * Nota de eo quod ad Regem pertinet. Anno 1 E. 2.

See more of this matter, 3 El. Dier 201, 202. 9 El. Dier 261, Muſgraves caſe. 16 El. Dier 323, Taverners caſe.

The Defendant in an Appeale of murder upon not guilty pleaded, was found guilty of manſlaughter: and it was reſolved by the Juſtices upon conference between them, that the Queen might pardon the burning of the hand, for that is no part of the judgment at the ſuit of the party Plaintif in the appeal, but it is a collaterall, and exemplary puniſhment inflicted by the ſtatute of 4 H. 7. cap. 13.

Trin. 40 El. coram Rege in appeal de murdro. Inter Shugborough & Buggings. Ll. fo. 90. & 110 b. 15 H. 7. 9. 4 H. 7. ca. 13.

In ſome actions wherein the ſubject is ſole party (as appeareth by that which hath been ſaid) ſome things the King may pardon: ſo on the other ſide, where the King is ſole party, yet ſome things there be, that he cannot pardon. As for example; For all common nuſances, as for not repairing of bridges, high-waies, &c. the ſuit (for avoiding of multiplicity of ſuits, which the laws abhorre, and that nulli magis tueri rempublicam creditum eſt quam regi) is given to the King onely, for redreſſe, and reformation thereof, but the King cannot pardon, or diſcharge either the nuſance, or the ſuit for the ſame; for, as Bracton ſaith, Non poterit Rex gratiam facere cum injuria & damno aliorum. See Glanvill li. 7. cap. 17. verſ. finem.

3 E. 3. Aſſ. 445. 16 E. 3. Gran. 53. 35 H. 6. 29. per Forteſcue. 37 H. 6. 4. b. Pl. Com. 487. in Nichols caſe.

4 E.4.fo.4.12. The Cuſtomer albeit the bond and ſurety be made to him for the importing of Bullion according to the ſtatute of 14 E. 3. cap. 1. yet cannot he releaſe it, quia pro bono publico. If one be bound in a recogniſance, &c. to the King to keep the peace againſt another by name, and generally all other Lieges of the King; In this caſe, before the peace be broken, the King cannot pardon or releaſe the recogniſance, although it be made onely to him, becauſe it is for the benefit and ſafety of his ſubjects.

11 H.4.43.
37 H.6.4.b.
1 H.7.10.b.

1 H.7.3. After an action popular be brought, tam pro domino Rege, quàm pro ſeipſo, according to any ſtatute, the King cannot diſcharge but his own part, and cannot diſcharge the Informers part, becauſe by the bringing of the action he hath an intereſt therein: but before action brought, the King may diſcharge the whole, (* unleſſe it be provided to the contrary by the Act) becauſe the Informer cannot bring an action or information originally for his part onely, but muſt purſue the ſtatute: and if the action be given to the party grieved, the King cannot diſcharge the ſame.

27 H.6.4.
See before ca.88. Againſt vexatious Relators, &c. in fine.
* 3 H.8.c.12.&c.

Lib.5.fo.50. Buggins caſe. Eodem li.fo.51. Hals caſe. All ſuits in the Star-chamber though exhibited by the party, are Informations for the King, and the King may pardon them, but after judgement (and dammages, if any be given) and coſts tared, the King cannot pardon them.

a Prov.20.28. Miſericordia & veritas cuſtodiunt regem. [a] And that party which informeth not the King truly, is not worthy of his grace and forgiveneſſe, and therefore either Suppreſſio veri, or expreſſio falſi doth avoid the pardon.

b 9 E.4.28. 19 E.3.Cor.124. 6 E.4.4.per Cheke. 11 H.4.16. [b] A man commits felony, and is attainted thereof, or is abjured for the ſame, the King pardoneth him the felony without any mention of the attainder, or abjuration, the pardon is void. c But if a man be attainted of burglary, and by the generall pardon all felonies, &c. are pardoned (except all burglaries) the attainder and burglary be excepted, as before is ſaid.

c Lib.6 fo.13.

F.N.B.225.c. The King pardoneth to A. a felony whereof he ſtandeth indicted, or indicted and attainted, &c. and in truth he is not indicted, nor attainted, &c. this is expreſſio falſi, and maketh the pardon void. A. is outlawed, and the King pardons him the outlawry, and all his goods; it is void for the goods, for he muſt have a grant of them.

9 H.5.14,15. If a man be indicted of felony, and the King reciteth the ſame, and pardoneth the felony contained in the indictment, and all outlawries thereupon, if any be, this is a good pardon of the outlawry, though it be doubtfully alledged, and the King not certainly informed.

F.N.B.269. 20 El.Dier 135. Lib.6.fo.13,14. Li.5.fo 51. Hals caſe. Regiſt.67. The King may pardon one convict of hereſie, or of any other offence puniſhable by the Eccleſiaſticall law. In all proceedings in the Eccleſiaſticall Court ex officio; the King may pardon the offence. The King may alſo pardon Piracy upon the ſea; but by what word, and in what manner, ſee before in the Chapter of Piracy.

Mich.37 & 40 El. Reſolution of the Juſtices concerning Pardons and Licenſes of Alienation and the pleading of them, &c. All the Juſtices of England being aſſembled at Serjants Inne in Fleet-ſtreet, when I ſerved Queen Eliz. as her Attorney generall, I moved this caſe unto them. A man ſeiſed in fee of two mannors, the one holden of the Queene by Knight ſervice in Capite, and the other holden of a common perſon, alieneth both, and the Alienee ſueth out a pardon for both, in which pardon the words are, quæ de nobis tenentur in capite per ſervic' militare, ut dicitur, and after this pardon being tranſcripted into the Exchequer, proceſſe goeth out againſt the Alienee, who pleadeth the pardon, beginneth his plea thus, Quibus lectis & auditis idem A. queritur ſe colore præmiſſorum graviter vexatum & inquietat' fore, & hoc minus juſte; quia dicit quod eadem domina regina per Literas ſuas Patentes, &c. and plead the Letters Patents of pardon, as they be with the ſaid clauſe of ut dicitur, and after he alieneth the manno with in rei veritate was not holden: The queſtion was, whether the ſecond Alience may plead the truth of the matter, or ought to be concluded by the pardon and plea of the firſt Alienee. And firſt the Juſtices had conſideration of the books in 29 Aſſ. pl.38. 46 E.3.33. Pl. Com. 398. 7 E.6. Tit.Eſtoppel.Br.222. And in the end it was reſolved by all the Juſtices, that the pleading of the pardon or

29 Aſſ.pl.38.
46 E.3.33.
Pl.Com.398.
7 E.6. Tit.Eſtop. Br.222.

of

of a license, as it is, is no conclusion for no more then the pardon or license being not positive or affirmative, but (ut dicitur) is a conclusion; no more is the pleading of them with the clause of (ut dicitur) any conclusion. And conclusions shall not be wrought by inference or implecation of a thing that is not directly alledged. But if the pardon or licence had been affirmative and direct without the clause, ut dicitur, it had been a conclusion, and so had the pleading thereof been also. Lastly, it was resolved, that in case of the pardon or license with the clause, ut dicitur; if the party confesse the tenure that plead the same; as to say, Bene & verum est, that the land is holden by Knights service in Capite, and plead the pardon or license, this shall conclude: and some of the Barons said, that according to these resolutions it hath been used in the Exchequer, and many presidents be there accordingly: & by these resolutions the Books abovesaid shal the better be understood.

If the King release to A all debts, and in truth A and B be indebted, this shall not discharge B: but otherwise it is in the case of a Subject, for in that case the release to one dischargeth both. 34 H.6.3. 21 E.4.46. 2 R.3.4.lib.5. fo.56.

If one be indebted to the King, if the King pardon or release the debt, the action and suit for the debt is discharged, and if he pardon or release the action and suit, the debt is discharged: and so it is in both these cases in the case of a Subject.

A man is indicted of trespasse and outlawed at the suit of the King, Rex pardonavit utlagariam in eum promulgat', & quicquid ad eum pertinet, and notwithstanding the defendant shall make fine, for it seemeth that these words, quicquid ad eum pertinet, without any reference, are too generall to dispence with the fine. 22 Ass.pl.37.

We finde also a discharge of further proceeding directed to the Judges of the Court, &c. (not by any pardon of the offence) but by the Kings acknowledgement under the Great Seale of the parties innocency, with commandement to the Judges, that in the former proceedings and Proces, &c. they shall altogether surcease: where upon the Court will award that the party shall go sine die, and that there shall be no further proceeding against him: As taking one example for many. William de Melton Archbishop of York was accused in the Kings Bench coram Rege & concilio suo, in Anno 3 E.3. for adherency to Edmond Earle of Kent in his treasons, whereunto the Archbishop pleaded not guilty, and after two Writs of Venire fac. awarded, the King directed his Writ under the Great Seal to the Judges of the Kings Bench, to this effect. Licet venerabilis pater Willielmus Archiepiscopus Eborum, & Stephanus London Episcopus, per diversa bria nostra coram nobis ad sectam nostram implacitentur de eo quod ipsi Edmundo nuper comiti Kantiæ adhæsisse debuerant: Quia tamen prædict. Archiepiscopus & Episcopus de adhæsione prædict. omnino immunes reputamus: Vobis mandamus, quod placitis prædictis coram nobis ulterius tenen' omnino supersedeatis. Teste me ipso apud Westm. 12 die Decembr. Anno Regni nostri 4. The award of the Court that is given thereupon, is very observable, *viz.* Cujus brevis prætextu, consideratum est, quod prædict. Archiepiscopus eat inde sine die, &c. Et ulterius non procedatur versus eum. Pasch.4 E.3.coram Rege Rot.38

Stephen Gravesend Bishop of London was charged with the same offence in Parliament, Anno 3 E.3. whence by order of Parliament the matter was referred to the Kings Bench to be tried, where he pleaded not guilty, & after was discharged *ut supra*, by the same Writ. These men (it may be) thought that the taking of the pardon should be an implyed confession of the fault, & therefore went a new way: but no man that is wise and well advised will refuse God and the Kings pardon how often soever he may have it; for there is no man but offendeth God and the King almost every day, and the pardon is the safest and surest way. Pasch.4 E.3.coram Rege Rot.53

If a man be indicted of felony, and found guilty and being in prison the King may under the Great Seale reciting the offence, &c. retain him to serve in his wars on this side or beyond the seas: this Charter he may plead, and the Court ought to allow it. As for example: Quidam indictatus de felonia, & inde culp. dicit quòd Rex eum conduxit, & inde producit cartam, quòd Rex eum conduxit Pasch.22 E.3.tit. cor.239.coram Rege.

duxit in Vaſc: in exercitu, & dicta carta allocata fuit per curiam. But a Protection lyeth not in that caſe: becauſe a Protection is a formed Writ, and cannot have ſuch a recitall of the truth of the caſe: and [a] Writs of Protection lye not in caſe of felony, nor is it to be allowed to any that is priſoner to the Court.

[b] One indicted of felony, without any learned Councell, ſhewed forth a Charter of pardon which was diſcordant to the Indictment, and alſo to his name; and becauſe the Court perceived that it was the Kings meaning he ſhould be pardoned, he was remanded to get a better pardon.

[c] What things be requiſite to a pardon of outlawry, ſee the ſtatute of 5 E.3. cap.12.

[d] When the parties defendants appeared to the Court to be poore, and were to be amerced or fined, the Entry of ancient time was, Perdonantur per Juſtic' quia pauperes.

[e] It is obſerved that Repeals by Parliament of Pardons lawfully and duly obtained, have been ſeeds of great diſcontentment, and of evill event.

[f] Generall pardons have been often granted at the Petition of the Commons, for they know beſt, where the ſhoe wringeth them, and wherein, and how they are to be eaſed.

So odious was perjury, that by the law of God it was not to be pardoned: Non miſereberis ejus, &c.

a 7 E.4.29.a.acc. 30 H.6.3. See the firſt part of the Inſtitutes. Sect.199.
b 26 Aſſ.p.46.
c 5 E.3.cap.12.
d Paſch.8 E.1. in banco Rot.79. Abbas de Burton &c.
e Vid.Rot.Parl. 21 R.2.nu.12,13, &c.
f 36 E.3.ca.ult. 4 R.2.nu.30,31, 32. 1 H.4.ca.20. 2 H.4.ca.13. 5 H.4.ca.15. 4 H.5.ca.8. a ſhort and effectuall pardon, and many others. Deut.9,21.

CAP. CVI.

Of Reſtitutions.

There is another worke of grace and mercy, that is, when any man or woman being attainted of High Treaſon, Petit Treaſon, or Felony, (whereby the blood is corrupted, &c.) or his or her heir is reſtored.

And ſeeing we have formerly ſpoken how far, and to what intent in thoſe caſes, the King of his grace may by his Charter of Pardon reſtore the party: we ſhall now treat of the reſtitution of the Delinquent, or of his or her Heirs by Parliament. Attainders ought to be had upon plain and direct evidence, (as before is ſaid) for if the party be executed, reſtitution may be had of his lands, &c. but not of his life. Generally, Reſtituere nihil aliud eſt, quam * in priſtinum ſtatum reducere.

See the firſt part of the Inſtitutes, ſect.1. fo.8.a. & 646,647,745. Vid.cap.pardon. fo.233.
* Gen.40.13. Iob.12.23.42.10 Reſtitutio ſecundum quid, ſeu in partem. Reſtitutio in integrum.

Of reſtitutions by Parliament ſome be in blood onely, (that is to make his reſort as heir in blood to the party attainted, and other his anceſtors, and not to any dignity, inheritance of lands, &c.) and this is a reſtitution ſecundum quid, or in part. And ſome be generall reſtitutions, to blood, honours, dignities, inheritance, and all that was loſt by the attainder: and that is reſtitutio in integrum, with an addition ſometimes, that it ſhall be lawfull for the party reſtored and his heirs, to enter, &c. Of the firſt you may read in Dier 10 Eliz. fo. 274. in Petition; and Rot.Par.23 Eliz. of the Earl of Arundel, &c. Of the ſecond you may reade 15 E.3.tit. Petition 2. 3 H.7.fo. 15.a. 10 H.7. 22,23.pl.com. fo.175. Rot. Par. 13 H.4.nu.20.&c. Of both of them you may read plentifully in our Bookes, and Parliament Rolls, and in divers of them with addition of Entry. See 1 H. 8. Kelw.154. Sir William Odehals caſe. 4 H.7.7. Lo. Ormonds caſe. Rot. parl. 11 H.4.nu.42. Rich de Haſtings caſe, and Rot. Parl. 14 E.4.nu.4. Sir John Forteſcues caſe, attainted of treaſon in 1 E.4.&c.

Brit.ca.13. fo.23. 10 Eli.Dier 274.

And the reaſon wherefore the King may by his Charter pardon the execution, and reſtore the party or his Heirs to the lands forfeited by the attainder, and remaining in the Crown is, for that no perſon hath thereby any prejudice; but to make

3 E.6.tit. Reſtitution.Br.37.

make reſtitution of his blood he cannot doe it, but by Act of Parliament, becauſe it ſhould be to the prejudice of others.

In cartis benigna facienda eſt interpretatio, in fundationibus domuũ religioſarum, hoſpitalium, & aliorum operum charitatis benignior, in teſtamentis magis benigna, in reſtitutionibus benigniſſima. [a] For it is holden in our Books, that in reſtitutions the King himſelfe hath no favour, nor his Prerogative any exemption, but the party reſtored is favoured.

[b] King H. 3. was intitled, &c. to the lands of William de Albo Monaſterio by his attainder, and granted the ſame to Robert de Mares and his Heirs, donec eas reddiderit rectis hæredibus per voluntatem ſuam, vel per pacem. And albeit at the making of this grant William de Albo Monaſterio (being dead) could have in reſpect of the attainder and corruption of blood no right Heir; yet becauſe it was to make reſtitution, it had a moſt benign interpretation.

[c] William Lo. Zouche of Mortimer and Elianor his wife prayed to be reſtored to their land of Glannor and Morgannon in Wales, the Mannor of Havely in the County of Worceſter, the Mannor of Tewkesbury in the County of Glocester, being the inheritance of the ſaid Elianor: who by the ertort means of Roger late Earl of March, were inforced to paſſe the ſame to the King by fine, in conſideration of ten thouſand pounds the King reſtored them thereto as in their former eſtate.

* Henry Courtney Marquiſſe of Exeter and Earl of Devon, having iſſue Edward Courtney, his onely ſonne, was attainted of High Treaſon by the courſe of the Common law in Anno 31 H. 8. and in the ſame yeare was alſo attainted by Act of Parliament. Queen Mary by her Letters Patents bearing date 18 Sept. Anno 1 Regni ſui granted the Mannors of P. and O. &c. in the County of Devon, &c. to the ſaid Edward Courtney and his heirs: and afterwards 5 Octobris in the ſame yeer, at a Parliament then holden, the ſaid Edward and his heirs were from thenceforth by Authority of that Act reſtored & inabled onely in blood, as well as ſonne and heir of the ſaid Lord Marquiſſe his Father, as to all and every other collaterall and lineall anceſtor and anceſtors of the ſaid Edward. And that the ſeverall attainders againſt the ſaid Lord Marquiſſe for the attainder of the ſaid Lord Marquiſſe be not in any wiſe prejudiciall or hurtfull to the ſaid Edward or his heirs for the corruption of the blood onely of the ſaid Edward, but that the ſeverall attainders and either of them be againſt him and his heirs for the corruption of blood onely, utterly void. Provided alwayes that the ſaid Act, ne any thing therein contained, ſhould not in any wiſe extend to give any benefit or advantage to the ſaid Edward, ne to his heirs, to demand, claime, or challenge any Honors, Caſtles, &c. ne any other hereditaments whatſoever whereunto H. 8. and E. 6. or either of them was entituled, or ought to have and enjoy by reaſon of the ſaid ſeverall attainders of the ſaid late Lord Marquiſſe, or of either of them. Edward Courtney died ſeiſed of the ſaid Mannors without iſſue, 18 Septemb. Annis 3 & 4 Ph. & Mar. and Reinold Mohun, Alexander Arundell, John Vinian the younger, John Trelawny Eſq; and Margaret Buller Widow, were his collaterall Couſins and Heirs: and whether the ſaid reſtitution extended to the Heirs collaterall of the ſaid Edward, was by the Queens commandement referred to the conſideration of the two Chief Juſtices Popham and Anderſon, Peryam Chief Baron, and to Egerton Attorny, and to the Solicitor Generall. And it was reſolved, that by reaſon of the attainder of the Lord Marquiſſe, if there had been no Act of reſtitution, the heirs collaterall of the ſaid Edward could not have inherited to the ſaid Edward, in reſpect of the corruption of the blood wrought by the ſaid attainder onely: hereupon it was objected, that when it was enacted by the ſaid Act of reſtitution, that the ſaid Edward and his heirs ſhould be reſtored and inabled in blood onely as ſonne and heir to his ſaid father, as all his anceſtors lineall and collaterall, that the ſaid reſtitution extended onely to his heirs lineall, for other heirs he could not have as long as the ſaid attainders of the Marquiſſe ſtood in force, and the words of the Act of Reſtitution to Edward and his heirs, might be ſatisfied with the heirs lineall. And upon due conſideration

See the firſt part of the Inſtitutes, Sect. 646, 647. 745 f. 390. verb. *Le ſank eſt corrupt*, &c.

a See 10 El. Dier ubi ſup. 41 E. 3. 5. b. 27 Aſſ. p. 48. 17 E. 3. 40. 5 E. 3. 66. 29 E. 3. 7. 20 Eliz. Dier 360 Pl. Com. 252. a. 16 E. 3. Livery 30 44 E. 3. 45. 18 E. 3. 21, 22. 24 E. 3. 29. 40 E. 3. grant 50.

b Mich. 8 E. 1. in Banco Rot. 62. Norff Rot. Par. Anno 4 E. 3 nu. 18. on the backſide of the Roll.

* An example of reſtitution in blood onely. 11 H. 4. nu. 42. 13 H. 4. nu. 19. 20

Mic. 35 & 36 El.

conſideration had of the caſe, it was (una voce) reſolved by them all, that corruption of blood is a diſtinct penalty inflicted by law; and that the ſaid Act of reſtitution did extend to the heirs collaterall of the ſaid Edward, (having no heirs lineall) as to the cleering and reſtoring of the blood, and avoiding of the corruption thereof: and that it had been ſufficient if the Act had reſtored and enabled him in blood onely as heir to his father, thereby he and his heirs, as well collaterall as lineall, might make their deſcent, or reſort from the Parquiſſe (for there was the ſtop and corruption) and from all other the anceſtors of the ſaid Edward, lineall or collaterall, and ex abundanti the other clauſe alſo is added, for the more manifeſtation hereof.

Margaret Plantagenet was Daughter to George Duke of Clarence attainted of High Treaſon by Act of Parliament 17 E. 4. and Siſter of Edward Earl of Warwick, onely ſonne of the ſaid George and Iſabel eldeſt Daughter of Richard Nevil Earle of Warwick and Salisbury: which Edward was attainted of High Treaſon in Anno 15 H. 7. before John Earle of Oxford then being High Steward of England. The ſaid Margaret was by Act of Parliament Anno 5 H. 8. reſtored to the ſtyle, ſtate, name, title, honour, and dignity of the Counteſſe of Salisbury, (ſhe was the laſt of the ſirname of Plantagenet) which Act is very well penned, and worthy the reading for many reſpects, and the Preamble thereof, inter alia.

Statute de 5 H.8. not in print.

Bills of reſtitution may begin in the Parliament, either in the Houſe of Commons, or in the Lords Houſe.

14 R. 2. nu. 36.
d Rot. par. 18. E. 1 nu. 11. of Liberties.
Stanf. pl. cor. fo. 165, 166, 167, 186, 66. 105. 107.
F. N. B. 66. a.
b 21 H. 8. cap. 11.
22 E. 3. cor. 460

[a] There be alſo other kinds of Reſtitutions to be treated of amongſt the Pleas of the Crown, as Reſtitution of goods upon an Appeal, whereof you ſhall reade in Stanford with this addition. Vide lib. 5. fo. 110. a. 21 E. 4. 10.

[b] And by the ſtatute of 21 H. 8. cap. 11. Reſtitution is to be granted upon an Indictment, &c. For by the Common law the party ſhould not be reſtored to his goods upon an Indictment (becauſe it is the ſuit of the King) albeit the enqueſt found that the party had made freſh ſuit. But reſtitution was to be made upon an Appeal which is the ſuit of the party.

Stanf. 167. a. b.
Lib. 5. fo. 10.
Lib. 6. fo. 80.

See Stanford alſo fo. 167. a. b. whereunto you may adde Lib. 5. fo. 110. a. & lib. 6. fo. 80. where you ſhall finde, that though this ſtatute of 21 H. 8. ſpeake onely of the party robbed, yet his executors are within the ſtatute, and ſo are his Adminiſtrators. For it is a beneficiall law, and giveth a more ſpeedy remedy to the party robbed, &c. then the Common law gave by way of appeale, and therefore ought to be conſtrued beneficially.

F. N. B. 66. a.
8 E. 2. tit. forfeiture 34.
3 E. 3. cor. 3. 65.
Vid. 40. E. 3. 42.
Lib. 5. fo. 110.
Hoſtons caſe.
c 8 H. 6. cap. 9.
See the ſecond part of the Inſtit. cap. 8. H. 6. cap. 9.
d 31 Eliz. cap. 11.
Vide 4 Mariæ,
e Dier 141.

Vide the Regiſter 68. b. that in ſome caſes when the King ought ex merito juſtitiæ to make reſtitution to the party: yet for the honour of the King the Writ ſaith, ſine dilatione reſtituas de gratia noſtra ſpeciali, which derogate nothing from the right of the Subject, when right is accompanied with grace.

Laſtly, there are other lawes concerning Reſtitutions of another kind. [c] As by the ſtatute of 8 H. 6. reſtitution is to be made, when he that hath an eſtate of inheritance or freehold is diſſeiſed by forcible entry or forcible deteiner. [d] By the ſtatute of 31 Eliz. there ſhall be no reſtitution by the ſtatute of 8 H. 6. upon an indictment of forcible entry or forcible deteiner, where the defendant hath been three whole years together before the day of ſuch indictment [e] in quiet poſſeſſion: and his eſtate not ended, according to the true meaning of a Proviſo in the ſaid Statute of 8 H. 6. as it is declared by the ſaid Act of 31 Elizabeth.

21 Jac. cap. 15.
By the ſtatute of 8 H. 6. cap. 9.

By the ſtatute of 21 Jac. Regis, ſuch Judges, Juſtices, or Juſtice, as are enabled to give reſtitution of poſſeſſion unto tenants of any eſtate * of freehold: &c. ſhall by reaſon of this Act of 21 Jac. have the like and the ſame authority upon indictment of ſuch forcible entries or forcible withholdings before them duly found, to give like poſſeſſion unto tenant for yeares, tenant by copie of Court Roll, guardens by Knights ſervice, tenants by Elegit, Statute Marchant, or by Statute Staple.

And

And for as much (as it hath been ſaid) no reſtitution ought to be made where the defendant or party indicted in caſe of freehold hath been in poſſeſſion by the ſpace of three whole yeers, &c. they having the like and ſame authority in caſe of tenant for yeers, tenant by copy of Court Roll, and other the tenants above named, cannot give reſtitution or poſſeſſion, where the party indicted hath beene in quiet poſſeſſion by the ſpace of three whole yeers. Nota, this Act of 21 Jac. extends not to a garden in Soccage, nor to a Garden or Keeper of a Parke: neither (as ſome hold) doth it extend to him, that by a laſt Will hath an intereſt in lands or tenements untill debts and legacies be paid, becauſe certain tenants be particularly nominated, and this is caſus omiſſus. But this being a beneficiall law to reſtore him, that right hath, to his poſſeſſion of lands, &c. whereof he was wrongfully by force diſpoſſeſt, or by force withholden, &c. and being in like caſe and equall miſchief, others doe hold, that this Act extendeth to this caſe of ſuch a deviſee, &c. and ſo it is for a tenant for a yeer, or for an half, or three quarters of a yeer.

See the ſtatute of 32 H. 8. cap. 3 where the particular tenant charged with more then the land is worth, may after his term expired hold over untill he be ſatisfyed, &c. in equall caſe with ſuch a deviſee.

* Nota, there be divers preſidents in the Chancery for reſtitution by writ to be made after execution upon a ſtatute Staple.

* Reſtitution of another kinde, whereof we remember no book caſe.

Anno 25 H. 6. Execution was ſued upon a Statute Staple, and for that no Certificat of the ſtatute, &c. appeared of Record, the Conuſee had a writ of Superſedeas out of the Chancery with reſtitution to be made; and the forme of this Writ appeareth in a Regiſter M. S. in the Chancery.

In the caſe of Sir Robert Gardner in the time of Sir Thomas Bromley Lord Chancellor, after a Superſedeas granted, execution was done upon a ſtatute ſtaple, whereupon a Superſedeas was granted with reſtitution reciting the ſpeciall matter.

There is another preſident in 33 Eliz. in the caſe of one Carrant, (but there the writ recited no ſpeciall cauſe, but pro diverſis cauſis & conſiderationibus) a Superſedeas with reſtitution was awarded.

FINIS.

THE EPILOGVE.

THus have we by the great goodneſſe of Almighty God, *Per varios caſus, per tot diſcrimina rerum*, brought this work concerning High treaſon, and other *Pleas of the Crowne*, or Criminall cauſes, and of Pardons, and Reſtitutions to a concluſion; wherein (as wee are verily perſwaded) wee have made it apparent from the lively voice of the lawes themſelves, that no Country in the Chriſtian world have in criminall caſes, of higheſt nature, lawes of ſuch expreſſe and defined certainty, and ſo equall between the King and all his Subjects, as this famous kingdome of England hath, being rightly underſtood, and duly executed, to the great honour of the King, and of the Laws, and the happy ſafety of all his loving and loyall ſubjects.

Now ſeeing *Iuſtitia eſt duplex*, viz. *ſeverè puniens, & verè præveniens*; that is, Juſtice ſeverely puniſhing, whereof we have ſpoken, and truly preventing, or preventing juſtice, (*quæ adhuc deſideratur*) for we have ſpoken onely of the former; we will therefore at this place (for a concluſion) point at the other with a direction how it may be effected. Juſtice divided.

True it is, that we have found by wofull experience, that it is not frequent and often puniſhment that doth prevent like offences, *Melior eſt enim Iuſtitia verè præveniens, quam ſeverè puniens*, agreeing with the rule of the Phyſitian for the ſafety of the body, *Præſtat cautela, quàm medela*: and it is a certaine rule, that *Videbis ea ſæpè committi, quæ ſæpè vindicantur*; Thoſe offences are often committed, that are often puniſhed: for the frequency of the puniſhment makes it ſo familiar as it is not feared. For example, what a lamentable caſe it is to ſee ſo many Chriſtian men and women ſtrangled on that curſed tree of the gallowes, inſomuch as if in a large field a man might ſee together all the Chriſtians, that but in one year, throughout England, come to that untimely and ignominious death, if there were any ſparke of grace, or charity in him, it would make his heart to bleed for pity & compaſſion. (But here I leave to Divines to inform the inward man, who being well informed, *verbo informante*, the outward man will be the eaſilier reformed, *virga reformante*.) *Regula.* *Sta, perlege, plora.* Seneca li 1. De Clem cap. 4. *Non minus principi turpia ſunt multa ſupplicia, quam medico multa funera.* *Regula.* *Non morbus pleriſque, ſed morbi neglecti curatio corpus interficit.*

This preventing Juſtice conſiſteth in three things. Firſt, in the good education of youth, and that both by good inſtruction of them in the grounds of the true religion of Almighty God, and by learning ſome knowledge or trade in their tender years, ſo as there ſhould not be an idle perſon, or a * begger, but that every childe, male * Deut. 15. 4. *Non erit omnino indigens & mendicus inter vos, ut benedicat tibi Dominus.*

male or female, whoſe parents are poor, might at the age of ſeaven yers earn their own living: for *Ars ſit quod à teneris primum conjungitur annis*: and this, for the time to come, would undoubtedly by preventing Juſtice avoid idleneſſe in all, (one of the foul and fatall channels that lead into *mare mortuum*) and by honeſt trades cauſe them to become good members in the Common-wealth.

Otioſus nihil cogitat niſi de ventre, & venere.

Secondly, in the execution of good lawes: True it is that there be good lawes already to puniſh idleneſſe, but none of ſufficient force or effect to ſet youth, or the idle on worke.

See before Ca. of Pardons.fo.236.

Thirdly, that foraſmuch as many doe offend in hope of pardon, that Pardons be very rarely granted, for the reaſons in the Chapter of Pardons expreſſed.

Pſal.58. 11. *Miſericordia Domini præveniet me.* 1 Maccab 6.27. *Niſi præveneris illis, majora quam hæc facient, & non poteris eos obtinere.*

But the conſideration of this prevenring Juſtice were worthy of the wiſdome of a Parliament, and in the meane time expert and wiſe men to make preparation for the ſame, as the Text ſaith, *ut benedicat eis Dominus.* Bleſſed ſhall he be that layeth the firſt ſtone of this building, more bleſſed that proceeds in it, moſt of all that finiſheth it, to the glory of God, and the honour of our King and Nation.

3 & 4 E.6. ca.5. in the Preamble. *Imprimis intereſt reipublicæ, ut pax in regno conſervetur, & quæcunque paci adverſantur, provide declinentur.* 1 Mar.cap.12. 32 H.8.ca.9. See the fourth part of the Inſtitutes, fo.312.b.

Et per grata Deus nobis hæc otia fecit,
Optimus eſt patriæ jura referre labor.

Deo gloria, & gratia.

FINIS.

A TABLE TO THE THIRD PART OF THE INSTITVTES OF THE LAWES OF *ENGLAND* Alphabetically Compoſed.

Ability & Diſability.

Where no man of full age ſhall be receiv'd in any Plea to diſable himſelfe. fo. 215.

Abjuration & Sanctuary.

The deſcription of it. 115.
Sanctuary the ground of Abjuration. ibid.
What kind of Abjuration remaines at this day. ib.
In what caſes a man may abjure, and in what not. 216, 217.
The iudgment in caſe of abjuration, and what is implied in it. 217.
Where a felon that eſcapes out of Priſon may take Sanctuary. ibid.
Where it ſhall be Felony in Recuſants that refuſe to abjure. How they may diſcharge themſelves, and what they forfeit. 102.
Where none ought to be exil'd to a Country of Infidels. 115.

Acceſſory *vide* Principall.

Adjournment.

Where a Commiſſion, Hac Vice, may be adiourned. 31.

Affrayes.

The definition of an Affray. 158.
Affrayes inquirable in Leets. ibid.
What perſons are bounde to part Affrayes. ib.
The puniſhmem of thoſe that ſhall refuſe to part Affrayes. ib.

Aliens.

What Aliens may commit treaſon, and what not. 4, 5.

Amercements.

The iudgment where the party is fined, and where he is amerced. 218
Where a towne ſhall be amerced for a Murder committed in it, and where not. 53.

Annum Diem & Vaſtum. 111.

Apparell.

How the Law ſtands now concerning Apparell. 199.
How exceſſe of Apparell is beſt cured. ib.

Appeale.

Appeales anciently of High Treaſon. 5. 132.
No Appeale of Treaſon can be brought in Parliament. 31.
Appeales of Rape. 60.
Where Appellees ſhall not have their Clergy. 114.
Where a conviction of Man-ſlaughter and Clergy prayed ſhall be a good Bar in an Appeale. 131
The ancient execution in an Appeale ib.
What the concluſion ſhal be in an Appeale where the plaintiffe is maimed and cannot toyne Battail. 132.
The iudgement in an Appeale where the defendant is ſlaine or banquiſh'd 212.
Where a man attainted is ſlaine, the wife may have an Appeale. 215.
Where the King cannot pardon an Appellee. 237.

Approver.

The deſcription of him. 129.
Who may be Approvers, and who not. 129.
Where none can be an Approver upon an Appeal, and where an Approvement ſhall ceaſe upon an Appeale brought. 129.
Of what offences an Approvement may be. 130.
Where the Appellees may joyne Battaile with the Approver and he ought to combat with them all, but not è contra. ib.
Where the Approver is pardon'd the Appellee ſhall be diſcharg'd. ib.
Where an Approver refuſing the Combate ſhall have iudgement, as in caſe of Petite Treaſon. 21.
No Iuſtice of Peace nor the Lord High Steward of England can aſſigne a Coroner to an Approver. ib.

Armour, and armed.

An expoſition upon the ſtatute of 2 E. 3 cap. 3. concerning riding armed 160.
The puniſhment of thoſe that ride or goe arm'd before this Act, and ſince. 114. 160, 162.
Who may puniſh thoſe that goe arm'd contrary to this ſtatute. 162.
No armour is to be worne where the Parliament is holden. 160.

Arreſt.

Where the arreſt of a man ſhall be lawfull upon a ſuſpition, and where not. 118.

Aſſent.

The difference between an Aſſenter and a Conſenter. 169.

Attainder.

Where a man commits Treaſon and dies before Attainder, he forfeits nothing. 12.
Where Attainders for Treaſon may be reverſ'd, and where not. 31. 214, 215.
Where auterfoitz Attaint for the ſame offence is a good Plea, and where not. 213.
Where auterfoitz Attaint for another offence is a good Plea, and where not. ib.
Where a man Attainted ſhall be liable to Arreſts & executions for Debts. 213, 215.
Where an Attainder is no Plea in an Action of Debt or any other Action. 215.
Where a man Attainted is ſlain, his wife may have her Appeale. ib.
Where a man Attainted may purchaſe lands to him & his heirs. ib.
Where a perſon Attainted may have an Action of Battery, or an Appeale of Maihem or Rape. ib.
Where an offence is excepted out of any generall Pardon, an Attainder for that offence is alſo excepted. 234, 238.

Attaint. *vide* Jurors.

Authority.

Where a ſtatute gives authority to divers or any two of them, one ſhall ſuffice to execute the Authority if there be no more. 136.

The Table.

Bailement.

When a man ſhall be ſaid to have goods in his poſſeſſion, and when in his charge. 108.

Battaile.

In what caſes triall by Battaile ſhall be. 159.
Campio, the Etymologie of the word, what a Champion ſignifies, and who may be a Champion. 221.
Where the Judges of the Common Law ought to direct the Combat, and where not. 221.
Where a Champion that kills another forfeits nothing. ib.
Where a Champion becomes Craven or Recreant, what he forfeits. ib.
Craven & Recreantia, unde derivantur. ib.
Where Battaile is joyn'd, & the Champion becomes blinde, he ſhall be diſcharg'd. 158.
Where after iſſue joyn'd, the triall by Battaile is become impoſſible by the act of God, the Appellee ſhall be diſcharg'd. 159.
The puniſhment of an Appellant or an Appellee that is banquiſhed. 221.
Where an Appellant and an Appellee combate until night, the Appellee ſhall goe free. ib.

Beggers.

Five kind of Beggers; the Alchymiſt, Concealer, Monopoliſt, Informer, and Poet. 75.

Benefices.

Where Eccleſiaſticall Dignities ſhall be accounted Benefices, and where not. 155.

Bonds.

Where a Subject is bound to doe any thing to the King as his liege Lord, no Bond is to be exacted of him. 149.
All Bonds and writings made to the Kings diſhonour are againſt Law, and void. ib.
Where a Bond exacted by any Eccleſiaſticall Judge not warrantable by Law, ſhall be void. ib.

Bribery.

The definition and derivation of the word. 145.
The difference between Bribery and Extortion. 147.
Who may commit Bribery. 147, 148.
Where Bribery may be committed although no ſuit depended. 148.
He that offers a Bribe to a Judge is puniſhable. 147.
What offices are within the ſtatute of 5 E. 6. cap. 16. made for prevention of Bribery. 148.
Where judgment given againſt a Judge for Bribery. 145.
A Lord Chancellor and a Lord Treaſurer of England ſentenc'd lately in Parliament for bribery. 148.
The puniſhment anciently and at this day for Bribery. 149, 224, 225.

Brothells.

Brothell houſes againſt the Law of God, and the Nation, and how puniſh'd. 205.
Brothell houſes anciently ſuffered, and when firſt prohibited. 205, 206.
The puniſhment of Harlots found within the Verge of the Court. 205, 206.
The cuſtome of London for entring into a houſe and carrying a Harlot to Bridewell, gone. 206.
Adultery anciently puniſh'd at the Common Law. ib.

Buggery.

The nature, definition and derivation of it. 58.
The ſeveral ancient puniſhments of it. ib.
How much is requiſite to make a Buggery. 59.
How the Indictment of it runs. ib.
Where in Buggery it ſhall be felony in the agent onely. ib.

Buildings.

What caſtles and houſes are prohibited ſubjects to build. 101.
The building of Vaults lawfull, & whence uſed. 103.
The building of Light-houſes, Sea-marks or Beacons unlawfull. 104.
Where one may erect any building upon his owne ground within the Kings Forreſt. ib.
Where none can be charged with building but by Act of Parliament. ib.
What things the Lord of the ſoile may build where others have Common of Paſture. ib.
Extent of Building very prejudiciall. 101.

Bulls.

Where it ſhall be Felony to bring in any Bulls of excommunication from forraine powers, and how anciently puniſhed. 100, 101.

Burglary.

The deſinition and derivation of the word. 63.
How anciently call'd. 65.
What ſhall be ſaid an Entry into, and breaking of a houſe to make it Burglary. 64.
What ſhall be ſaid a Manſion houſe, the breaking whereof makes it Burglary. 64, 65.
Where it ſhall be Burglary in all, although but one enter. 64.
Where a man may commit burglary though he break not the houſe. ib.
To breake a houſe with an intent to beat another, no Burglary. 65.
When Clergy was taken away from Burglars, and from what ſort of Burglars. ib.

Burning of houſes.

Ancient opinions concerning burning of houſes. 66.
What ſhall be ſaid a burning of a houſe to make it Felony. ib.
Where the burning of a houſe without an intent to do it, ſhall be Felony, and where not. 67.
What houſes it ſhall be Felony to burne, and what not. ib.
Where Clergy ſhal be allowed for burning of a barn, and where not. ib.

Challenge.

Where peremptory Challenge ſhal be allowed. 27.
The puniſhment of him that challenges peremptorily above 35 Jurors. 227.
In what caſes a man may challenge peremptorily but 20 Jurors, and what he forfeits that does. 228.

Chancery & Chancellour.

In what caſes the Chancery is a Court of Record, and in what not. 71.
Where the Lord Keeper ſhall be comprehended under the word Lord Chancellor. 113.
Where no Court of Equity under the penalty of a Præ-

Præmunire can proceed after judgment at the common law. 123, &c.
No Injunction after Verdict. 123, 124.

Childwite, quid? 206.

Church.

The punishment of those that quarrell or fight in Church or Church-yard. 176, 177.
Who hath liberty to build Churches by the Common Law. 201.
Where a man may prescribe to have an Isle in a Church for him and his family. Roof of a Parish Church 202.
Whether a Church or no Church, how it shall be try'd 202.
Consecration necessary to a Church or Chappell. ib.

Clergy.

What offenders may have their Clergy. 39.
When the benefit of Clergy was first taken away. 73.
By whom, of whom, and at what time Clergy may be demanded. 114.
The difference between a Clerk convict and a Clerk attaint ib.
Where the King may pardon the burning of the hand. ibidem.
None ought to make purgation at this day. ib.
Where the Ordinary may allow Clergy or disallow it. ib.
Where Clergy shall be denied upon a triall in a forain County, and where not. 114, 115.
Where Appellees shall not have their Clergy. 114.
No Clergy allowed anciently to them that did armed. ib.

Commissions.

Where a Commission hac Vice may be adjourn'd 31.
What Commissions are legall, and what not. 165.

Common of Pasture.

What things the Lord of the soyle may build where others have Common of pasture. 204.

Concealors and Concealments.

In exposition upon the Statute of 21 Jac. cap. 2. concerning Concealors 188, &c.
In what time and in what cases the King shall be barred by a concealment. 189, 190.
In what time and in what cases the Patentee of the King shall be barred by a concealment. 190, 191.
Where the King shall have his fee farme rent out of concealed lands. 191.

Conclusions or Estoppels.

No conclusions shall be wrought by intrevenes. 239.
Where the pleading of a pardon of alienation shall be a conclusion to the Alienee in the Tenure, & where not. ib.

Conspiracy.

The description of it. 143.
How the party grieved may be relieved against a conspiracy. ib.
The judgment in case of conspiracy at the suit of the King and at the suit of the party. 143, 222.
Conspiratours not baileable 143.

Constable and Marshall.

The Constable and Marshall have no jurisdiction to hold Plea of any thing triable at the common Law. 26.

Conviction.

Where none can be convicted by verdict but the offences must be found by 24. at the least. 30.
The difference between a Clerk convict and a Clerk attaint. 114.

Coroner.

Where one is Coroner both of the Kings house and County, an Indictment taken before him alone is good. 134.

Corporation.

None can erect a spirituall politique body without the Kings licence. 202.

Coverture.

Where a feme Covert may commit Larceny, & where not. 108.
Where a man may be accessory to the wife, but not the wife to the husband, ib.
Where the wife cannot steale the goods of her husband, 110.

Councell.

Several sorts of Councels that the King hath. 125.
What advantages a Prisoner may take in case of Treason or Felony to have Councell assign'd him. 137.
Where no man arraign'd for Treason or Felony can pray Councell without shewing some cause. ib.
Where in criminall causes there arises any matter of Law, the Court ex officio ought to assigne the Prisoner Councell though he requires it not. 230.
The reasons why a man indicted of Treason or Felony may not have Councell to plead for him. 137.

Deodands.

What they are. 57.
Where there shall be a Deodand when the party slaine is within the age of discretion, & where not. ib.
Where the sword of a stranger shall be a Deodand. 58.
Where a ship, boat, or vessell shall be a Deodand, & where not. ib.

Depopulations.

Depopulators punish'd at the Common law. 204.
Depopulatores agrorum, why so call'd. ib.
How the Indictment or Appeale against Depopulators shall be especiall and not generall. ib.
Where Depopulation may be prohibited before it be done. 205.

Dies.

The division of a naturall Day. 63.
Inter Canem et Lupum, id est, Crepusculum. ib.

Dilapidations.

Dilapidation a good cause of deprivation. 204.

Dispensations.

An exposition upon the statutes of 21 Jac. cap. 3. concerning Dispensations with Penall Lawes. 186.
Dispensations with Penall Lawes were against the Common Law. 186, 187, &c.

All

All promiſes made of Diſpenſations or forfeitures are void. 187.
Who may compound or diſpenſe with a forfeiture. ib.
The end of Empſon and Dudley Maſters of the forfeitures. ib.

Divorce.

What ſhall cauſe a Divorce à vinculo Matrimonii, and what à Menſa & Thoro. 89.

Domus Manſionalis.

The diviſion of it. 64.

Dower.

Where an heire ſhall inherit, the wife ſhall be endowed againſt him. 90.
Where a Fine with Proclamations and 5 yeares paſt ſhall barre the wife of her Dower, and where not. 216.

Drunkenneſſe.

King Edgar's Law againſt drinking. 200.
When Drunkenneſſe came firſt into England. ib.

Duels.

Duels againſt the Law of God, Nature, and the Realm. 157.
The puniſhment of Duelliſts though no blood be ſhed. 158.
How challenges are puniſhed. ib.
What Duels are lawfull, and what not. ib.
Where Kings of England have offered to try their title by ſingle combate. 159.
The difference inter Duellum & Monomachiam. 221.

Dyet.

The puniſhment for eating fleſh on faſting dayes. 206.

Eccleſiaſticall.

Eccleſiaſticall perſons leading exemption from Secular jurisdiction. 24.
Where Judges of the common Law may take cogniſance of a ſtatute made concerning matter meerly ſpirituall. 45.

Ægyptians.

Where it ſhall be felony for Egyptians to ſtay within the Kingdoms. 102.

Embring.

Embring dayes, when ſo called, & when they are. 200.

Endowments.

Who may erect Hoſpitals, Schooles, or other workes of charity, & endow them without license, and who not. 202.

Error.

Where an Error in the judgement may reverſe the execution, but an Error in the execution can not reverſe the judgement. 210.
The judgment to reverſe or avoid an Outlawry in caſe of Treaſon or Felony. 214.
Where a man is erroneouſly outlawed by Proceſs out of the Kings Bench, a writ of Error lies in the ſame Court. ib.
Where a writ of Error lies to reverſe an Attainder of High Treaſon, and where not. 214, 215.

Eſcape.

Where a voluntary Eſcape ſhall be Felony in the Gaoler and where not. 70.

Eſcheat.

Where Treaſon committed by a man attainted of Felony ſhall not devеſt the Eſcheats formerly veſted in the Lord. 213.
Where an Eſcheat of land lawfully veſted may afterwards be devеſted. 231.

Exaction, *vide* Extortion.

Execution.

Where the King can not alter Execution otherwiſe then the judgement of Law doth direct. 52.
Where the ſame Execution ſhall be done upon an implied judgment, as upon an expreſſe. ib.
Where Execution ought to be according to the judgment, and that none for Felony ought to be beheaded, though ſome examples there be to the contrary. 211, 212, 217.
Where Execution ought to be done by the right officer. 217.
Where Execution ſhall be reſpited to a woman quick with child once in caſe of High Treaſon as well as Felony. 17, 18.
Where Execution was done upon a man for the death of a child, the child being then alive. 232.

Executor.

Where moderate funerall expences are to be allowed to an Executor, before any debt or duty whatſoever. 202.

Exemplifications.

What deeds or records may be exemplified under the great Seale, and what not. 173.
Where a part of a Record ought not to be exemplified, but the whole Record it ſelfe. ib.

Exigent.

What a man that is put in Exigent ſhall forfeit. 232.
How a man that is put in Exigent may excuſe his abſence. 238.

Extortion and Exaction.

The difference between Bribery and Extortiõ. 147.
Where ſeveral Officers were puniſhed for Extortion and Exaction. 149.
The fees of certain officers appointed by ſtatute. 150

Falſifying of Attainders.

Where a ſtranger ſhall falſifie an Attainder by traverſing the offence, & where by traverſing the time of the offence. 230, 231.
Where an Attainder may be falſified by the plea of the party himſelfe. 231, 232.
Where an heir may falſifie an Attainder by plea. 231
Where a Fugam fecit may be falſified by traverſe, and where by matter of Law. 232.

Felo de ſe.

The deſcription of him. 54.
Where a man ſhall be ſaid Felo de ſe, & where not. ib.
Where the Executors or Adminiſtrators of Felo de ſe may traverſe the inquiſitiõ taken, & where not. 54, 55.
How a Felo de ſe ſhall be enquired of where the body can not be found. 55.
What Felo de ſe ſhall forfeit. ib.
Where a joynt-tenant becoming Felo de ſe ſhall forfeit but part, and where the whole. ib.

Fe-

Felony.

Where in Felony voluntas anciently reputabatur pro facto. 5. 161.
All Treason implies a Felony. 15.
Who shall be said a Felon for conspiring the death of any great person within the statute of 3 H.7 ca. 14. and who those persons are, and who have power to enquire of it, and to try it. 38.
Where it shall be Felony to kill another at a Just or Turnament, and where not. 56.
Where it shall be Felony by the statute of 3 H.7.cap.2. for carying away a woman against her will. 61.
What woman that statute extendeth to, & what not. ib
Where it shall be Felony by the statute of 5 H.4.ca.5. for cutting out the tongues or putting out the eyes of any man. 62.
The cutting off of a mans privities anciently Felony, now Mayhem. 62,63.118.
The cutting off of Eares no Felony. 63.
Where breakers of Prison shall be Felons. 69.
Where a relation shall never make a man a Felon. 70
Where it shall be Felony by the statute of 8 H.6. cap. 12. &c. to embesill Records. 70,71 &c.
Where Multiplication shall be Felony by the statute of 5 H.4.cap.4. 74.
Where hunting with Wizors shall be Felony by the statute of 1 H.7.cap.1. 75,76.
Where embeseling the Kings armour by the statute of 21 El.cap.4. shall be Felony. 78.
Where the serving of forain Princes shall be Felony by the statute of 3 Jac.cap.4. 80,81
Where the offence against this Statute shall be tried. 80
Where it shall be Felony in the Gaoler by duress of imprisonment to make a man become an Approber against his will. 91.
Where it shall be Felony to conceale and deny goods though he found them, and where not. 98. 108.
How a Felon that is in Prison may be retain'd to serve the King in his warres. 239.
The judgement in case of Felony. 211.
What things are implied in the judgment for Felony. 47.

Fines.

Where a Fine with Proclamations and 5 yeares past shall bar the wife of her Dower, and where not. 216.

Fines. *vide* Amercements.

Flattery.

The description of a Flatterer. 207.
In ancient Law against Flatterers. ib.
The sentence of Holy Writ against Flatterers. ib.
The miserable ends of divers Flatterers and Favourites. 208.

Flemenesfreme, quid? 181.

Force, and Forcible Entry.

Diversity of Forces. 161.
Where the Sheriffe may remove a Force, but not restore possession. ib.
Where a man may gather Forces, and where not. 161,162.
The writ to remove a Force grounded upon the statute of 2 E.3.cap.3. 162.
Where and in what cases a man shall be restored to his possession upon a forcible entry. 242,243.

Forestallers.

The Etymologie of the word. 195.
What a Forestaller is, and his punishment. ib.
Forestallers punishable at the Common Law 196.
Where an attempt by words to enhance the price of Merchandize is punishable. 195.
Where a deceit to abate the price of wares is punishable. ib.
The policy of former times to prevent forestalling. ib

Forfeiture.

What things a man attainted of Treason shall forfeit, and what not. 18,19 21.
Things that lye not in Tenure are not forfeitable for Felony, but shall extinguish. 21.
The forfeiture of a man convict of Heresie. 43.
What an offender that is killed in resisting an Officer shall forfeit. 56,227.
Confiscare, unde? 227.
Where goods forfeited ought to appeare upon Record, and where not ib.
Where a Felon wades his owne goods, they are forfeited though they be not properly Bona Waviata. ib
In an Appeale of robbery, if the plaintiffe omit any of the goods stoln, they are forfeited. ib.
Where the Plaintiffe for a false Appeale shall forfeit his goods. ib.
Where the goods and issues that are attach'd or distrain'd by processe out of any Court shall be forfeited, and what the Sheriffes Return shall be thereon. 228.
Where none may seise the goods of any person before conviction, and the punishment of them that doe it. 228.229
The begging of the estate of a man before Attainder or Conviction altogether unlawfull. 229.
No goods of an Offender ought to be search'd or Inventoried before Indictment, nor removed before condiction. ib.

Forgery.

An expostion upon the statute of 5 El.cap.14. concerning Forgery. 168.
Where the inserting of a clause into a Will without direction of the devisor shal be a Forgery within this Statute. 170.
Where the Forgery of a Lease or a Rent for yeares is within this statute. ib.
Where a man that pronounceth and publisheth a deed to be true which he hath been told to be false, shall be punish'd within this statute. 171.
What Statutes and Recognisances are within this Law, and what not. ib.
Where a Forgery before this Statute is not punishable by it. 172.
Where Forgery shal be Felony, & where not, and it's forfeiture. 103,172
How Forgery anciently was punish'd. 168.
Forgery, whence so called. 169.
Where the ante-dating of a Deed shall be adjudged Forgery. ib.
Where a false Deed shall be as penall as a forged. ib.
The making of a false Customary adjudged Forgery. 169,170.

Forain Plea.

Where upon an indictment, a man may plead a Forain Plea, and where not. 27.

THE TABLE.

Forests.

An expoſition upon the ſtatute of 1 H 7. cap. 1. concerning hunting with dogs 75,76
What ſhall be ſaid Foreſts Parks, and Warrens within this ſtatute. 76.
What ſhall be ſaid a Concealment within this ſtatute. 77,78.
Where none may erect any building upon his owne ground within the Kings Foreſt. 204.

Franchiſes.

What the Franchiſes de Furca & Foſſa be. 58.

Fugam fecit.

Where a Fugam fecit may be falſified by traverſe, and where by matter of Law. 232.

Fugitives.

What ſtatutes have been made and are now in force againſt Fugitives. 178.
Where and how the Common Law prohibited men to paſſe beyond the Seas without the Kings licenſe. 178, &c.
What perſons may goe beyond Sea without licenſe, and what not. 179 180.
The puniſhment of ſuch as goe beyõd Sea without Licenſe, or returne not at the Kings command. ibidem.
By what Seales the King may give Licenſe to travell, and by what Seales he may command back again. 180
Where a Subject of one Kingdome flies into another, he ought not by the Law of Nations to be ſent back againe. ib.

Gentlemen.

The ancient puniſhment of a Ruffian ſtriking a Gentleman. 141,157.

Gaoler and Priſoner.

How Priſoners ought to be uſed. 34,35.
Where a Priſoner by dures of the Gaoler comes to an untimely end, it is murder in the Gaoler. 52.91
Where it ſhall be Felony in a Gaoler by dures of impriſonment to make a man become an Approver againſt his will. 91.
Where the Cozoner ought to ſit upon the Body of every Priſoner that dies in Priſon. 52.91.
Where it ſhall be Felony in the Northern Counties to impriſon or detain another againſt their will. 106.
How a man that is impriſon'd muſt be diſcharged. 209.
Where a Judge or Juſtice may diſcharge a man out of Priſon, and where not. ib.
Where the plaintiffe may diſcharge the defendant out of Priſon, and where not. 209,210.

Guns.

Ordnance, whence ſo called. 79.
No Guns ought to be tranſported. 97

Habiliment.

What it ſignifies. 9.

Hawkes.

An expoſition upon the ſtatute of 37 E. 3. cap. 19 concerning ſtealing of Hawkes. 97.
What Hawkes it ſhall be Felony to ſteale by this Law, and what not. 97,98.
The puniſhment anciently for taking away and concealing an Hawke. 97.
In what Hawkes a man may have a property. 98,99.
How the party that finds a Hawke ought to demean himſelfe. 57 &c.

Heire.

Non eſt Hæres Viventis. 9.

Hereſy.

Who are Judges of Hereſy. 39,40 42.
What ſhall be accounted Hereſy. 40 42.
Lollards formerly indicted for Hereſy. 41.
The puniſhment of an Heretique. 43.44.
In what time an Heretique may abjure his opinion. 43.
The forfeiture of one convict of Hereſy. ib.
Words may make an Heretique, but no Traytor. 14.

Hobelarius; quid? 79.

Hockettors or Hocquetours; quid? 175.

Homicide.

How many ſorts of Homicides there are 54.
What Homicides are Felony, and what not. 54,55.
The deſcription of Homicide. 55.
What Homicide ſe defendendo is, and what he ſhall forfeit. 56.
Where a man ought to give back to prevent Homicide, and where not. ib.
What Homicide per Infortunium is, and what he forfeits. 56,57.
The definition and derivation of Chance-medly 57.
Where the Jury cannot find generally that the party kill'd him ſe defendendo, but the caſe ought to be ſpecially. 210.
Where an Officer may kill an Offender that reſiſts or flies away, and where not. 221.

Hue and Cry.

From whence it is derived, and how divided. 116.
The deſcription of Hue & Cry at the common law ib.
The puniſhment of them that ſhall not levy or purſue an Hue and Cry. 117.
5 Caſes wherein Hue & Cry ſhall be by ſtatute ib.
A difference between the proſecution of a Hue & Cry at the Common Law, and of an Hue and Cry by the ſtatute. ib.
The puniſhment of him that levies a Hue and Cry upon a falſe cauſe. 118.
Where the City of London was taken into the Kings hands for not levying a Hue and Cry. ib.

Indictment.

The form of an Indictment for Treaſon. 12.
Proditorie neceſſarily to be uſed in all Indictments for Treaſon. 4.15
The Indictments of Treaſon and Felony againſt Edward Duke of Somerſet. 12,13.
Where a generall Indictment ſhall be good without expreſſing any particular 16.
Where an Indictment of a Peer ſhall be by Freeholders. 26.
Where upon an Indictment a man may plead a forrain plea, and where not. 27.
The Indictment of Weſton for poyſoning Sir Thomas Overbury, & the proceedings againſt him and his Ac-

Accessories 49,50. 135.
The difference between the Indictments for Burglary, and burning of houses. 67
An Indictment, Quare bona Capellæ in custodia &c. is good. 110.
Where one man is Coroner both of the Kings house and County, an Indictment taken before him alone is good. 134.
Where the substance of an Indictment is proved, no matter for circumstances. 135.
Where a man is indicted for poysoning another, no other cause of his death can be given in evidence. ib.
Where a Murder is laid in an Indictment to be by one kind of weapon, any other kind of weapon may be given in evidence. ib.
The Indictments against Empson and Dudley. 208.
Where upon an insufficient Indictment, the party may be indicted anew, and where not. 214.
Where the very day of a Felony committed is not necessary in an indictment 230.

Infant.

Where an Infant is capable of committing Treason, and where not. 4. 6.

Informers.

An exposition upon the statute of 21 Jac. cap. 4. concerning Informers. 191.
Where and before whom an Information upon a penall statute shall be tried by this Law. 193.
Where an Information is laid in a forain County, the defendant shall be found not guilty. ib.
Where the Informer shall take an Oath that he believes the offence was committed within a yeare before the Information brought, and in no other County. ib.
Where in Informations upon Penall Lawes, the defendant may plead the generall issue. ib.
Where an Action upon a Penall Statute must be brought by Information or Originall, and not by Bill. 194.
Where the Kings Attorney may proceed for the King after the death of the Informer. ib.
Where an Informer may proceed for his part although the Kings Attorney enter a Non vult prosequi for the King. ib.
Where an Informer may proceed upon a Popular Action, notwithstanding the Kings Pardon of the offence, and where not. 194,195.

Ingrosser.

From whence derived. 195.
Salt, a victuall within the statute of 5 E. 6. cap. 14. that may be ingrossed. ib.
Where the Ingrossing of Apples is not punishable by that Statute. ib.
Where a Merchant that selles in grosse shall be termed an Ingrosser, and where not. 196.

Institution.

Where a Church shall be said full by Institution, and where not. 155.

Joyntenant.

Where a Joyntenant becoming Felo de se shall forfeit but part, and where the whole. 55.
Where a release to one joynt debtor shall enure to both, and where not. 239.

Ireland.

Where Ireland shall be said out of the Realm, and where not. 11,18.
Where a writ of Error shall be maintainable here in the Kings Bench, upon a judgement given in the Kings Bench in Ireland. 18.

Judges and Justices.

Where Judges in criminall causes ought not to deliver their opinions before hand. 29.
Where Justices of Peace are not included under the name of Justices of Oyer and Terminer. 103.
The punishment of those that seek revenge against a Judg, or any other, for doing anything in discharge of their office, or for complaining in any Court of Justice. 142
The attainder of certain Judges. 146,147.
The properties of a Judge, and how he ought to be qualified. 147. 225.
Certain prohibitions made against Strangers executing any judiciall offices. 225,226.
The oath of the Kings Justices in Anno 18 E. 3. printed amongst the statutes, no Act of Parliament. 223 224.
Judgement given against a corrupt Judge. 223.

Iudgement.

Unde derivatur. 210.
How many sorts of judgements there are. ib.
The judgement in case of High Treason, how warranted by Scripture, and what is implied in it. 210,211.
The judgement in case of Petite Treason. 20,211.
The judgement in case of Felony. 211.
The judgement in case of an Appeale where the defendant is slain or banquished. 212.
The judgement to reverse or avoid an Outlawry in case of Treason or Felony. 214.
The judgement in case of abjuration, and what is implied in it. 217.
The judgement in case of Petite Larceny. 218.
The judgement in case of Misprision of Treason. ib.
The judgement for striking in Westminster Hall sitting the Court. ib.
The judgement for striking and drawing blood in the Kings Court. ib
The judgement in case of a Premunire. ib.
The judgement in case of Theft bote. ib.
The judgement where the party is fined, and where amerced. ib.
The judgement given for the death of a man per Infortunium. 220.
The judgement given for the death of a man se defendendo. ib.
The judgement given for the death of a man that was slain attempting to rob another. ib.
The judgement in case of Conspiracy at the suit of the King, and at the suit of the party. 222.
The judgement given in an Attaint. ib.
Judgement given against a corrupt Judge. 223.
Where a man that stands mute upon an indictment of Treason shall receive the same judgement as if he were condicted by Verdict or Confession. 14.
Where an Appriver refusing the Combate shall have judgement as in case of Petite Treason. 21.
What things are implied in the judgement against a Felon. 47.
Where a saving that is repugnant to the expresse judgement shall be void. ib.

When the certain judgement for Felony came in. 53.
Where no Court of Equity under penalty of a Præmunire can proceed after judgement at the Common Law. 123,&c.

Jurors.

What men grand Jurors ought to be. 32,33.
The punishment of a grand Juror for declaring publiquely who is indicted. 106,107.
The punishment of those that shall abuse Jurors 142.
Perjury in Jurors how anciently, and how now punished. 163.
Where in an Assise the Jury is informd but on one side, there is good cause of Challenge. 175.
Where Attaints shall be brought. 223.
The judgement in an Attaint. 222.
Where the party grieved may have an Attaint at the Common Law, or grounded upon the statute of 13 H.8.cap.3. at his election. 223.

Larceny.

The description and derivation of it. 107.
Where there must be a felonious taking as well as a felonious carrying away to make a Larceny. ib.
What shall be said a felonious taking to make a Larceny. 107,108.
What shall be said a felonious carrying away to make a Larceny. 108,109.
Of what things Larceny may be committed. 109,110.
The judgement and punishment of Petite Larceny. 109,218.
Where a man may have a property in some things, and yet no Larceny can be committed of them. 109.
Where a Larceny may be committed of things feræ naturæ, and where not. 109,110.
The punishment of such as steale the egges of any Birds or Fowle 110.
Where it is Larceny to steale the sheets from the dead. ib.
Where a man may steal his own goods. ib.
Where the wife can not steale the goods of her husband. ib.
Where an Attainder of Petite Larceny shall bene plea to another Felony. 253.
Where a man flies or is put in Exigent for Petite Larceny, he forfeits his goods. 218.

Law.

How our Law is a Law of it selfe divided from all others. 100.
Where the Law shall give no benefit to any thing that is done in fraudem Legis. 64.108.
What amittere liberam Legem signifies. 221,222.

Letherwite; quid? 206.

Libels.

A Libell punished at the Common Law. 174.
A French Libell punishable. ib.

London.

Where the Mayor of London shall be principall in Commissions in London by the Charter of the City, and where not. 73.
What part of the Tower is within London, and what within Middlesex. 136.
The custome of London for entring into a house, & carrying a Harlot to prison, good. 206

Machecarii.

Its description, and derivation. 110.

Maihem.

The ancient punishment of it. 118.
Where felonicè Maihemavit ought to be in all Appeales and indictments of Maihem. ib.
Where the cutting off of a mans privities was anciently Felony, now Maihem onely. 62,63.118.

Mariage.

Where a man may disagree to a mariage though he were of the age of consent at the time of the mariage solemnized. 89.
The ancient punishment for a Christian marying with a Jew. ib.

Marshall; *vide* Constable.

Medietas Linguæ; *vide* Triall.

Metall.

Six sorts of them; what they are. 74.

Mines.

What Mines belong to the King, and what to the Subject. 132.

Misprision.

The derivation of the word, and the definition or signification of it. 36.
Severall sorts of Misprisions, and their punishments. 36.139,140.
Where words without an overt act are as punishable as Misprision of Treason. 14.
Where forging or counterfeiting of forain Money is Misprision of Treason. 17.36.
Every Treason and Felony includes in it a Misprision. 140.
Where to strike in Westminster Hall or the Kings Palace is a great Misprision, and the punishment of it. ib.
Where it shall be a Misprision to rescue a Prisoner, and what he shall forfeit. 141.
What Courts it shall be a Misprision to strike in, and in what not. ib.
The judgement in case of misprision of Treason. 218.

Money.

No money is to be impos'd upon the Subject but of gold or silver. 17.
Where it shall be Felony to bring in, pay, or coyne forain moneys. 92.
Where the transportation of silver, and the importation of evill money shall be Felony, and in whom. 92,93.

Monopoly.

The definition and Etymologie of it. 181.
All Monopolies against the fundamentall Lawes of the Land, and punished by them. ib.
An exposition upon the statute of 21 Jac.cap.3. concerning Monopolies. 181,182.&c.

What

What offices and other privileges are excepted out of this Statute. 185.
Where, and how Monopolies shall be tryed, and the penalty of such as delay the Actions. 182, 183.
Where new Manufactures shall be a Monopoly, and where not. 114.

Monuments.

The punishment of those that shall deface any tombe or Monument. 202.
Where the erecting of a tombe shall be lawfull, and where not. ib.
The reverence to be given to Monuments, and the use of them. 202 203.
Monumentum; unde? 203.
Where our law takes no cognisance of the burialls of the dead. ib.
Cadaver; unde? ib.
Where the Jewes anciently had their Burialls. ibid.

Mordancestor.

Where a writ of Mordancestor is maintainable though there be no immediate descent to the heir. 231.

Multiplication.

An Exposition upon the Statute of 5 H. 4. cap. 4. concerning Multiplication. 74.
Licenses granted by the King to certaine persons to use the Art of Multiplication. ib.

Murder.

The derivation and Etymology of it. 47, 48.
Poysoning the worst of Murders. 48.
How many wayes a man may be poysoned. 52.
What persons are capable of being murdered. 50.
The drowning of certaine Jewes adjudged Murder. ibid.
Where it is no Murder to kill an Infant in Ventre sa Mere. ib.
What shall be said malice prepens'd to make a Murder. 51.
Where a mistake in the Principall shall make the Accessory guilty of Murder, and where not. ib.
Where there ought to be a continued malice to make it Murder, and where not. ib.
How many kindes there be of Malice implied. ibid.
What Officers it is Murder to kill. 52.
Where to kill another without provocation is malice implied. ib.
Where a prisoner by duress of the Gaoler comes to an untimely end, it is Murder in the Gaoler. 52 91.
Where a Sheriffe or other Officer executes an offender contrary to the judgement, it is Murder in them. 52.
Where it is Murder for any one to execute another by Marshall Law in time of Peace. ib.
How the yeare and day in case of Murder shall be counted. 53.
Where the killing of another by misfortune shall be Murder, and where not. 56, 57.
Severall Lawes made to prohibite pardons of wilfull Murder. 157.
Murder never pardoned by expresse name. 235.

Newes.

The ancient punishment of those that spread false newes. 158.

Non compos mentis.

Where a man non compos mentis may commit Treason, and where not. 46.
Where a man non compos mentis shall not answer for a Felony or a Treason by him committed, nor shall suffer execution for them. ib.

Non obstante.

Where the King by a Non obstante may dispense with a penall Law, and where not. 154.
Where the King by a Non obstante may dispense with the Statutes concerning pardons. 236.

Nusance.

Where none ought to erect any building to anothers Nusance. 201. 204.

Oath.

The definition and derivation of it. 165.
How many sorts of oathes there are. ib.
Sacramentum, Juramentum, & Jusjurandum; unde? ibid.
An Oath not to be impos'd or alter'd but by Authority of Parliament. ib.
The punishment of such as shall administer an Oath without authority of Law. ib.
What things are requisite to a true Oath. 166.
Where a Court may administer the Oath of Allegiance to a suspitious person. 167.

Office.

Where no Office is requisite to find a title which stands with the title of the King. 216.

Ordnance; *vide* Guns.

Ordinary.

The fees of the Ordinary for Probate, &c. 149, 150.
Where and how the Ordinary may dispose of some goods of an Intestate to pious uses. 150.

Outlawry.

Where a man out of the Realme at the time of an Outlawry pronounced may reverse it, and where not. 31.
Where a man out of the Realme may be Outlawed for Treason, and how he may discharge himselfe of it. 216.
Where the Court may award execution upon one that is taken upon a Capias Utlagatum for Felony, and where not. 212.
By a pardon of an Outlawry, the goodes are not restored. 238.

Pagans.

An ancient Law againſt the abuſe of Pagans. 209.

Paine fort & dure.

In what caſes a man that ſtands mute ſhall have judgement of Paine fort & dure, and in what not. 217.
Where the judgement of Pain fort & dure ſhall be no plea to a former Felony. 213.

Pardon.

The deſcription and Etymologie of it. 233.
How many ſorts of pardons there are. ib.
Where a pardon granted by a King de jure ſhall be voyd. 7.
Where a pardon of Felonies ſhall be no pardon of Treaſon at this day. 15.
What the King can reſtore by a pardon, and what not. 233.
What pardons the Court ought to take notice of without pleading. 234.
The forme of pleading a generall pardon. ib.
Where an offence is excepted out of any generall pardon, an Attainder for that offence is alſo excepted 234.238.
Where a writ of Allowance is neceſſary to a pardon, and where not. 234.235.
Formes of antient pardons. 235.
Where the King pardons Sectam pacis de homicidiis, he pardons the offence it ſelfe. ib.
Where the foundation of a debt is pardoned, the debt it ſelfe is pardon'd. 236.
What, and how the King may pardon, and what not. 236.237.
How far a pardon of all Felonies extends. 236.
Where the King may diſpenſe with the Statutes concerning pardons with a Non obſtante. ib.
Where the King cannot pardon an Appellee. 237.
Where the King may pardon a Collaterall Act in an Appellee. ib.
Where the King may pardon an exemplary puniſhment that tends not to the damage of the plaintiffe ibid.
Where the King may pardon a corporall puniſhment which tendeth to common example. 171.
Where in ſome actions the King may pardon ſome things though a Subject be ſole party, and in other actions the King can pardon nothing though himſelfe be ſole party. 237.
Where a Bond is made to a Subject or to the King pro bono publico, the Subject can neither releaſe it, nor the King pardon it. 238.
What actions popular the King may pardon, and what not. ib.
What ſuits in the Star-chamber the King may pardon, and what not. ib.
Where Suppreſſio veri or expreſſio falſi ſhall avoyd a pardon ib.
Where an Outlawry ſhall be pardon'd though the King be not certainly informed. ib.
Where the King may pardon Hereſy, and any other offence puniſhable in the Eccleſiaſticall Court ibid.
Where the King pardons the Debt, the Action is diſcharg'd, ſo if he pardons the Action, the Debt is diſcharged. 239.
Where the King may pardon the Outlawry, and yet the fine remaine. ib.
Where the King under the Great Seale may command all proceſſe and proceedings in criminal cauſes to ceaſe. ibi
Where a Superſedeas was ſent to the Judges to proceed no further againſt one that had obtain'd his pardon. 137.

Parliament.

Names appropriated to certaine Parliaments. 1.
The uſe of proclaiming Acts of Parliament. 41.
How dangerous it is to bring new words into Acts of Parliament. 126.
No Armour is to be worne, nor playes or games uſed where the Parliament is holden. 160.
The King and one Houſe of Parliament alone, or both Houſes of Parliament without the King can not declare a Treaſon within the Statute of 25 E. 3. 22.

Peeres.

Where the Indictment of a Peere is by Free-holders. 26.
How the triall of a Peere and a common perſon differs, and the forme of his Triall. 28,29.
Where a Peere cannot have his triall by Peers. 30.
No Biſhop, Abbot, &c. ſhall be tried by Peeres. ibid.
In what caſes a Peere ſhall be tried by Peeres, and in what not. ib.
What Lords ſhall be tried by Peeres, and what not. ib.
How Lords Spirituall ought to withdraw at all trialls of Peeres in Parliament, but they may make their Proxies. 31.
How a Peere ſhall be outlawed. ib.

Penſions.

Where it is not lawfull to receive a penſion from any Forain State. 144.

Pera; quid? 204.

Perjury.

An Expoſition upon the Statute of 5 El. cap. 9. concerning perjury. 103,164.
Where in an Action brought upon this Statute, the plaintiffe ought to declare in certainty whether the defendant was perjured by his owne proper act, or by ſubornation. 167.
Where in an Action brought upon this Statute, it ſhall not be enough to ſay that the Defendant falſò dixit & depoſuit, but he muſt ſay likewiſe, voluntariè & corrupte. ib.
The ancient puniſhment of perjury. 163.
Perjury; whence ſo called? ib.
Perjury in Jurors how anciently, and how now puniſhed. ib.

Perjury in a witneſſe puniſhed at the Common Law. 164.
Where Perjury ſhall be puniſhed in the Eccleſiaſticall Court, and where not. ib.
Where Perjury upon an information is puniſhable, and not upon an Indictment. ib.
The deſinition of Perjury. ib.
Where a falſe oath ſhall be Perjury, and where not. 166.
Where Perjury ought to be in a Judiciall proceeding. ibid.
Where to call another, perjur'd man, will beare an Action, and forſwoorne man, none. ib.
How perjury in an anſwer in the Chancery, Exchequer chamber, &c. ſhall be puniſhed. ib.
Where an oath ought to be abſolute to make it perjury. ib.
How a man that ſweares falſly, and yet ſweares the truth ſhall be puniſhed. ib.
Where perjury ought to be in a point materiall. 167.
Subornation; unde derivatur? ib.
What a Suborner of witneſſes ſhall forfeit. ib.
Where an Action lyes in the Chancery for perjury committed there. ib.

Pillory and Tumbrell.

The derivation and ſignification of them. 119.
What the puniſhments of them be. ib
A Pillory and Tumbrell ought to be in every Fayre and Market. ib.
The Pillory and Tumbrell were ordained for great offences onely. ib.

Piracy.

The Etymology of the word. 112.
In expoſition upon the ſtatute of 28 H. 8. cap. 15. concerning piracy. 111.
How piracy was puniſhed before this Act. 112.
Where a pardon of all Felonies ſhall not extend to piracy ib.
Where there ſhall be no corruption of blood in caſe of piracy. ib.
No Acceſſories to piracy ib.
Where piracy was anciently Treaſon, and where not. 8. 113.
Where piracy may be committed betweene the high water, and low water marke. 113.
The puniſhment of a Pirate ſtanding mute. 114.

Plague.

In Expoſition upon the Statute of 1 Jac. cap. 31. concerning plague ſoares. 96.

Plea.

Where auterfoits attaint for the ſame offence is a good Plea, and where not. 213.
Where auterfoits attaint for another offence is a good Plea, and where not. ib.
Where the judgement of Pain fort & dure ſhall be no plea to a former Felony. ib.
Where an Attainder of Petite Larceny ſhall be no Plea to another Felony. ib.
Where auterfoits acquite is a good plea, and where not. ib.
Where upon an Indictment or Appeale for the death of a man, it is found that he killed him in his owne defence, he ſhall be acquit for ever. 213, 214.
Where auterfoits convict devant judgement is a good plea, and where not. 214.
Where an Attainder is no plea in an Action of Debt, or any other Action. 215.
Where a Defendant may plead without having a day in Court, and where not. 235, 236.

Polygamy.

The deſinition of it, and how it differs from Bigamy. 88.
An Expoſition upon the Statute of 1 Jac cap. 11. concerning Polygamy. ib.
At what age a man or woman may be guilty of Polygamy. ib.
Where a Mariage de facto, and not de jure, may make a man guilty of Polygamy. ib.
Where notice of a Husbands life is materiall to make a wife guilty of Polygamy, and where not. ibid.
Where, and what, Divorces ſhall ſave a man from being guilty of Polygamy. 89.

Powdike.

Where it ſhall be Felony to cut downe the Powdike in Marſhland in Norfolk. 106.

Prieſts.

Where it ſhall be Felony to receive a Jeſuite or Prieſt. 101.

Premunire.

Whence ſo called. 120.
An Expoſition upon the ſtatute of 27 E. 3. cap. 1. and other Statutes concerning premunires. 119, 120, &c.
Where ſuits in the Eccleſiaſticall Courts concerning temporall cauſes ſhall incurre a premunire. 120, 121, 122.
What Courts it ſhall incurre a premunire to ſue in 120, 121.
The Biſhop of Norwich attainted in a premunire for holding plea of a temporall cauſe. 121.
Where no Court of Equity under penalty of a premunire can proceed after judgement at the Common Law 125. &c.
Where the Defendant in a premunire ought to appear in perſon, and not by Attorney. 125.
Where he that procures another to ſue in the Eccleſiaſticall Court may be made a Principall in a Premunire. ib.
The puniſhment of a premunire. 126.
What lands and hereditaments a man convict of a premunire ſhall forfeit. ib.
How largely the word [Favor] in the ſtatute of 16 R. 2. cap. 5. concerning premunires was conſtrued ib.
What ſtatutes have been made, and are now in force concerning premunires. 126, 127.
The forme of a renunciation in caſe of a premunire. 127.
The judgement in caſe of a premunire. 218.

Preſentation.

Where a Gardein in Soccage ſhall not preſent to an Advowſon, nor an heire of Tenant in Capite that hath liberty cum exitibus. 156.

Prince.

The Prince committed to priſon by the Chiefe Juſtice of the Kings Bench. 225.

Principall & Accessory.

In what Treasons all are Principalls, and in what not. 9 16.21.138.
Where an Accessory can not be guilty of Petite Treason when the Principall is guilty of Felony onely. 20.
Where there may be Accessories after a Witchcraft committed, as well as before. 45.
How the triall shall be where the Felony is done in one County, and the Accessory is guilty in another. 49 135.
Where a mistake in the Principall shall make the Accessory guilty of Murder, and where not. 51.
Where the Common Law or Statute Law makes a Felony, Accessories are still included, 59.72.
Where the being present, and abetting an offence, makes all Principalls, though the offence be personall. 59.64.
Where a man may be Accessory to his wife, but not the wife to the husband. 108.
Where the Accessory shall not be tried if the Principall hath his Clergy. or be pardon'd. 114.139.
Where a man may be Accessory to the stealing of his own goods. 134.
Who shall be said a Principall, and who an Accessory. 138.
Where a man may be Principall though he be not present at the act. ib.
Where the Accessory can not be guilty of a greater offence then the Principall 139.
Where a man may be both Principall and Accessory. ib.
Where the Attainder of an Accessory depends upon the Attainder of the Principall. 231,232.

Prisoners; *vide* Gaoler.

Priviledges.

Westminster Hall and the Kings Palaces priviledged p'aces from all Summons or Citations. 140,141.
Where an ancient priviledge shall remaine to a new erection, and where not. 204.

Proclamations.

Where Proclamations are of great force. 162.

Prophesies.

The punishment of Prophesying. 128.
The danny and uncertainty of Predictions. ib.

Protections.

Where no Protection lyes for a Felon, nor any that is Prisoner to the Court. 240.

Provisors.

In expostion upon the statute of 13 R 2.cap.3. concerning Provisors. 100
All provisions against the Common Law. ib.

Punishments.

Exemplary punishments adjudged in the Kings Bench. 219 220.
Ancient Rules of Law in Corporall Punishment. 220.

Purveyors.

Wherein Purveyors may commit Felony. 82.
An Expostion upon the Statutes of Purveyors. ibid.
Where a Purveyor shall observe a discharge of Purveyance, and where not. ib.
Where a Purveyor shall have his remedy at the Common Law, and not by a Privy Seale. ib.
A Commission granted for the taking up of Ropes for the Kings Chappell. ib.
How and in what manner the King shall have purveyance of Salt-petre. 82,83,&c

Quare Impedit.

NO damages in a Quare Impedit or Darrain presentment at the Common Law. 156.

Rack; *vide* Torture.

Rape.

WHat Rape is, and the punishment of it at the Common Law. 60.
What makes a Rape, and what not. 59.60.
The hainousnes of the offence. 60.
Appeales of Rape. ib.

Records.

In expostion upon the statute of 8 H.6.cap.12. concerning embeseling of Records. 70,71,&c.
The punishment of this offence before this Statute. 71.
What Records it shall be Felony to embesill within this statute. 72.
Where this statute shall be a sufficient Commission to the Justices of either Bench to enquire of this Felony, and where not. 73.
The definition and derivation of a Record. 71.
A Record is proved by it selfe, and ought to be common to all. ib.
In what cases the Chancery is a Court of Record, and in what not. ib.
A Judge fined for razing a Record. 72.

Redoubbors and Addoubors.

The description of them. 134.

Regrator; under 195.

Relation.

Where a Relation shall never make a man a Felon 70.
Where a Relation shall never work a bar, nor a wrong to a stranger. 216.

Religion.

Where a man that is entered into Religion can not be a purchaser to him, and his to heirs. 215.

Restitution.

What it is, and how divided. 240.
Severall sorts of restitutions. 241.
What Restitution the King may make, and what not. 240.
Where Restitution is much favoured in Law, and severall cases of it, 241 242

Where

Where Reſtitution ſhall be of goods ſtoln, and to whom. 242.
Where and in what caſes a man ſhall be reſtored to his poſſeſſion upon a forcible entry. 242,243.
Where Reſtitution may be granted by writ after execution upon a Statute Staple. 243.

Riots, Routs, and unlawfull Aſſemblies.

The deſcripton of them and their derivation. 176.
The difference betweene levying of warre and committing of a great Riot. 9, 10.

Roberdsmen.

Whence ſo called. 157.
Severall Statutes made againſt them. ib.
The deſcription of Robin Hood. ib.

Robbery.

The definition and derivation of it. 68.
The difference betweene a Robber and a Cutpurſe. ibid.
The puniſhment now and anciently of Cutpurſes. ibid.
What ſhall be ſaid a taking in caſe of Robbery, and what ſhall be ſaid a taking from his perſon. 68,69.

Rogues.

Where it ſhall be Felony in dangerous Rogues to begge or wander. 103.

Roy.

Where a pardon granted by a King de Jure ſhall be voyd. 7.
Where a King is King before Coronation. ib.
Where the King may put a man to anſwer without Indictment or Preſentment. 136.
Where a man ſhall loſe his right hand for ſtriking in the Kings Palace, and where not, and how anciently it was puniſhed. 140.
The Kings Palace a priviledged place from all Summons or Citations. 140,141.
What ſhall be ſaid the Kings Will. 146.
Where a Subject is bound to doe any thing to the King as his Liege Lord, no Bond is to be exacted of him to doe it. 149.
All Bonds or Writings made to the Kings diſhonour, are againſt Law, and void. ib.

Sacriledge.

The Etymology of it. 64.

Sakebere.

What it ſignifies, and from whence it is derived. 69.

Saving.

Where a ſaving is repugnant to the expreſſe judgement, it ſhall be voyd. 47.

Seale.

Sigillum; quid? 169.

Servants.

Where it ſhall be Felony in Servants to embezill their Maſters goods after their death. 104.
Where it ſhall be Felony in Servants to embezill their Maſters goods committed to their truſt. 105.
What Servants this Felony ſhall extend to, and to what goods. ib.

Sheep.

The penalty of conveying ſheep alive out of the Realme. 104.

Sheriffe.

Where the Sheriffe may raiſe the Poſſe Comitatus and where not. 161.

Simony.

Whence ſo called. 153.
In expoſition upon the ſtatute of 31 El. cap. 6. concerning Simony. ib.
Where an Uſurper may commit Simony. ib.
Where the Simony of an Uſurper ſhall not prejudice the rightfull Patron ib.
In what the Simony of the Patron only ſhall prejudice the Incumbent, and in what not. 154.
What a Simoniſt ſhall forfeit. ib.
The puniſhment of thoſe that ſhall take or give any reward for Reſignations, Admiſſions to Churches, or any other Eccleſiaſticall promotions 155,156.
Simoney and perjury goe together. 156.

Souldiers.

In Expoſition upon the Statute of 39 El. cap. 17. concerning wandring Souldiers. 85.
How Souldiers anciently were retain'd. 86.
Where a Souldier was fined for refuſing to redeliver his armour. 79.
In Expoſition upon the Statutes concerning Souldiers departing without License. ib.
How a Souldier that departs without license ſhall be proceeded againſt, though he be never taken. 87.
Where a Souldier that departs without License ſhall have his Clergy, and where not. ib.
The ancient puniſhment of Souldiers that depart without License. ib.

Statutes.

Where a Statute is made contrary to Magna Charta it ſhall be holden for none. 111.
In Expoſition upon theſe Statutes following.
2 E. 3. cap. 3. concerning riding armed. 160.
25 E. 3. cap 2. of Treaſons. 1, &c.
27 E. 3. cap. 1. concerning Premunires. 119.
27 E. 3. cap. 3. Statutum Stapulæ. 96.
37 E. 3. cap. 19. concerning ſtealing of Hawkes. 97.
13 R. 2. cap. 3. concerning Probiſors. 100.
5 H. 4. cap. 4. concerning Multiplication. 74.
5 H. 4. cap. 5. concerning cutting out of Tongues. 62.
11 H. 4. cap. 9. concerning Trials. 32.
8 H. 6. cap. 12. concerning embezeling of Records. 70.
1 H. 7. cap. 7. concerning Hunting with Wizors. 75.
3 H. 7. cap. 2. concerning the carrying of women away againſt their will. 61.
3 H. 7. cap. 14. of Felony for conſpiring the death of the King or of any Privy Counſellor. 37.
3 H. 8. cap. 12. concerning Trialls. 33.
28 H. 8. cap. 15. concerning Piracy. 111.
33 H. 8. cap. 1. concerning falſe Tokens. 133.
35 H. 8. cap. 2. concerning Trials of Forain Trea-

THE TABLE.

Treasons. 11.
1 E.6. cap. 2. concerning witnesses in case of Treason. 24.
2 E.6. cap. 24. concerning Trials. 48.
5 E.6 cap. 11. concerning Treasons. 24.
1 Mar. cap. 1. concerning Treasons. 23.
1 & 2 Phil. & Mar. cap. 10. concerning Treasons. 24.
5 El. cap. 9. concerning Perjury. 163, 164.
5 El. cap. 14. concerning Forgery. 166.
21 El. cap. 4. against embezeling of the Kings Armour. 78.
31 El. cap. 6. concerning Simony. 153.
39 El. cap. 17. concerning wandring Souldiers. 85.
1 Jac. cap. 11. concerning Polygamy. 88.
1 Jac cap. 12. concerning Witchcraft. 45. 46.
1 Jac cap. 31. concerning Plague soares. 90.
3 Jac. cap 4. concerning the serving of Forain Princes. 80, 81.
21 Jac cap. 2. concerning Concealors. 188 &c.
21 Jac. cap. 3. concerning Monopolies and Dispensations. 181. 186.
21 Jac. cap 4. concerning Informers. 191.

Supersedeas.

Where a Supersedeas was sent to the Judges to proceed no further against one that had obtained his pardon. 137.

Sylliva or Sullivа; quid? 204.

Theftbote.

The definition and Etymology of it. 134.
The punishment of it. ib.
What shall be said Theftbote, and what not. ib.
The judgement in case of Theftbote. 218.

Tort.

No man shall take advantage of his owne Tort. 215

Torture.

No Torture to be used by our Law 35.
By whom the Rack was first brought in. ib.

Treason.

In Expositon upon the Statute of 25 E.3. cap. 2. de Proditionibus. 1, 2, &c.
What are Treasons by the said Statute. 3.
What King is within this Statute. 6, 7.
What shall be said a levying of warre within this Statute to make a Treason. 9. 10, 12
What shall be said an adhering to the Kings enemies to make a Treason within this Statute. 10.
What shall be said a counterfeiting of the great Seale to make a Treason within this Law. 15 16.
What shall be said a counterfeiting of the Kings Money to make a Treason within this Law. 16, 17, 18.
What shall be said a bringing in of counterfeit Money into this Realm to make it Treason within this Law. 18.
Where the Judges may not construe this Statute à Simili, or à minore ad majus. 22.
The King and one House of Parliament alone, or both Houses of Parliament without the King can not declare a Treason within this Statute. ibid.
In Expositon upon the Statute of 1 Mar. cap. 1. concerning Treasons. 23, 24. &c.
Where declarations of Treasons may have limitations. 24.
Treason its derivation, and how divided. 4.
Proditorie necessarily to be used in all Indictments of Treason. 4. 15.
Where a man non compos mentis, nor an Infant is capable of committing Treason at this day. 4. 6.
What Aliens may commit Treason. 4, 5.
Where anciently in Treason voluntas reputabatur pro facto. 5. 161.
Appeales anciently of High Treason. 5. 132.
Where the compassing the death of the King was Treason at the Common Law. 5.
Where the death of the King per infortunium shall be no Treason. 6.
Where to set a Figure to know how long the King shall reigne, or live, is no Treason. ib.
Where to practise to depose the King, to imprison him, or to take him into their power, shall be Treason. ib.
Where to compasse the death of the Father of the King, or of the Kings Uncle, anciently was Treason. 7.
Where to leave the King in periculo Hostium was anciently Treason. ib.
Where piracy was anciently Treason. 8.
Where it shall be Treason for the Husband of a Queen Regnant to compasse the death of his wife, so on the contrary. ib.
Where the killing of an Embassador was adjudged Treason. ib.
Where the killing or the violating of a Queen Dowager shall be no Treason. 8, 9.
Where the killing of a Collaterall Heir apparant shall be no Treason. 9.
Where the compassing or conspiring to levy warre without levying of it, shall be no Treason. 9, 10. 14.
In High Treason all are Principalls, but not in Petite Treason. 9. 16. 21, 138.
The difference between levying of a warre, and committing of a great Riot. 9. 10.
What gathering of Forces shall be counted High Treason. 10. 12.
Where ayding of the Kings enemies pro timore Mortis shall be no Treason. 10.
Who shall be said Enemies, and who Traytors. 11.
The forme of an Indictment for Treason 12.
Where Conspiracy with a Forain Prince shall be Treason, and where not. 14.
Where words may make an Heretique, but no Traytor. ib.
Where words set downe in writing may amount to Treason. ib.
All Treason implies a Felony, but a pardon of all Felonies is no pardon of Treason at this day. 15.
Where he that counterfeits the Kings Coyn shall have punishment, but in Case of Petite Treason otherwise, if he had diminished it. 17.
Where a man may be imprisoned upon suspition for having clipt false money. 18.
Where there is no Treason to kill any of the Lords or Commons in Parliament, but wilfull murder onely. ib.

What

THE TABLE.

What things a man attainted of Treaſon ſhall forfeit, and what not. 18,19. 21.
No Treaſon for an Indictor to diſcover the Kings Councell. 22.
What witneſſes or accuſers are requiſite in Indictments and trialls of Treaſon or Miſpriſion of Treaſon. 24,25 26.
No Appeale of Treaſon can be brought in Parliament. 31.
Treaſon ſeverely puniſhed. 35.
Where the receiving and comforting a Traitor knowing him to be a Traytor is Treaſon. 138.
The judgement in caſe of High Treaſon, how warranted by Scripture, and what is implied in it. 210,211.
Where a writ of Error lyes to reverſe an Attainder of High Treaſon, and where not. 214,215.
Three ſorts of Petite Treaſons. 19,20.
The judgement of a woman for Petite Treaſon. 20.
Parricide no Petite Treaſon. ib.
What was Petite Treaſon at the Common Law, and what at this day. ib.
The judgement in caſe of Petite Treaſon. 211.

Treaſure and Treaſury.

What, and where the Kings Treaſure and Treaſury is. 71,72.

Treaſure Trove.

The deſcription of it. 132.
Why Treaſure Trove belongs to the King. ib.
What Metall Treaſure Trove muſt be of. ib.
To whom anciently Treaſure Trove belonged. ibid.
The puniſhment for concealing of Treaſure Trove. 133.

Trebuchet.

Trebuchet, or Caſtigatory; quid? and the puniſhment of it. 219.
Tucking ſtole; unde derivatur? ib.

Trials.

How a forain Treaſon ſhall be tried. 11. 24.
Where a Commiſſion without the Kings hand ſhall be a ſufficient aſſignement within the Statute of 35 H. 8. cap. 2. to try a forraine Treaſon. 11.
Where Treaſons committed upon the Sea ſhall be tryed. ib.
How trialls of Treaſons ſhall be, and where. 24, 34 49.
What witneſſes or accuſers are requiſite in Indictments and trialls of Treaſon or Miſpriſion of Treaſon. 24 25 26.
Where an Alien ſhall be tried per medietatem linguæ, and where not. 27.
Where trialls may be in forain Counties. ib.
Where a triall may be in the County where the Kings Bench ſits during the Terme. ib.
How the triall of a Peere and a common perſon differs, and the forme of the tryall. 28,29.
In what caſes a Peere ſhall be tried by Peeres, and in what not. 30.
What Lords ſhall be tried by Peeres, and what not. ib.
In what caſes a man muſt be tried by a Jury of that County in which the Indictment was taken, and in what not. 34.
How a Murder committed out of the Realme ſhall be tried. 48.
How a Murder ſhall be tried where the Blow was given out of the Realme, or upon the Sea, and the Party dyed within the Kingdome. ibid.
How a Murder ſhall be tryed when the Stroake is in one County, and the death in another. ibid.
How the triall ſhall be where the Felony is done in one County, and the Acceſſory is in another. 49. 135.
Where Criminall Cauſes ſhall receive their triall. 80.
How the Lord Steward may proceed upon the Statute of 2 E. 3. cap. 24. to try an Acceſſory in another County. 136.
Where a Blow is given in any Court, (ſedente Curia,) how the triall ſhall be. 141.

Tumbrell; *vide* Pillory.

Turneaments.

Turneamentum; unde? 160.
None ought to Tourney without the Kings licenſe ib.
Where it ſhall be Felony to kill another at a Juſt or Turneament, and where not. 56. 160.

Value.

HOw the value of any thing ſhall be conſtrued. 105.

Verdict.

No privy Verdict can be given in caſe of Felony or Treaſon. 10.

Uſury.

The Definition, and Derivation of it. 151.
Uſury againſt the Law of God, and the lawes of the Realme. 151,152.
Why Uſury was permitted for an Hebrew to an Infidell. 151.
The ancient puniſhment of Uſury. 151,152.
Baſt ſummes that the Kings in former times received of the Jewes for Uſury. 151.

Witchcraft.

WHen Witchcraft was made Felony, and how anciently it was puniſhed. 44
The deſcription of a Conjurer, a Witch, an Inchanter, and a Sorcerer. ib.
An Expoſition upon the Statute of 1 Iac. cap. 12. concerning Witchcraft. 45 46.
Where there may be Acceſſories after the Witchcraft committed as well as before. 45.

The

The punishment of Witches, Impostors, or the like. 46.

Witnesses.

What Witnesses or Accusers are requisite in Indictments and Trials of Treason, or Misprision of Treason. 24,25,26.
No Witnesse or Accuser by hear-say in case of Treason. 25.
Where Witnesses shall be examined upon oath against the King in Criminall Causes. 79.

Women.

In Exposition upon the Statute of 3 H.7.cap.2. concerning the carrying away of women against their will. 61.
To what women this Statute extendeth, and to what not. ib.

Wool.

Where it shall be Felony to transport Wool. 95.
What a Sack, Pocket, Sarplet, Weigh, Wrapper, Todd, and Stone of Wool signifie. 96.

Writs.

The Writ ad jura Regia, where it lyes. 100.
Where a Writ may be devised for the better execution of a Statute. 162.

FINIS.




Anno 1629.
PRVDENS
QVI
PATIENS.
I Payne fecit

6145. m. 8 (2)

THE FOURTH PART OF THE INSTITUTES

Of the Laws of *England*:

CONCERNING

THE JURISDICTION

Of Courts.

PROVERBS 22. 28.

Ne transgrediaris antiquos terminos quos posuerunt patres tui.

Terminos propriæ potestatis egressus in aliam messem perperam mittit falcem suam.

Author Edw. Coke *Milite, I. C.*

Hæc ego grandævus posui tibi, candide Lector.

MDCXLVIII.

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A

TABLE OF THE SEVERALL Courts in this Fourth part of the Institutes, Treated of.

Chap. Pag.

1 *OF the high and most honourable Court of Parliament.* 1

2 *Of the Councell Board or Table.* 53

3 *Of the Power and Authority of the Protector.* 58

4 *Of the Court of the High Steward of England.* ibid.

5 *Of the Court of Star-Chamber,* Coram Rege & Concilio. 60

6 *Of the Court for redresse of delayes of Judgements in the Kings great Courts.* 67

7 *Of the Court of Kings Bench,* Coram Rege. 70

8 *Of the Court of Chancery,* Coram Rege in Cancellaria. 78

9 *And incidently of the Court of Requests.* 97

Chap. Pag.

10 *Of the Court of Common Pleas.* 99

11 *Of the Court of Exchequer.* 103

12 *Of a Court to enquire of, and certifie unlawfull and untrue Accompts in the Exchequer.* 117

13 *Of the Court of Exchequer Chamber.* 118

14 *Of the first fruits and Tenths Eccleſiaſticall.* 120

15 *Of the Court of Augmentations.* 121

16 *Of the Court of generall Surveyors of the Kings Lands, &c.* 122

17 *Of the Court of Chivalry before the Lo: Conſtable and Earl Marſhall.* 123

18 *Of the Court of the Marſhalſea.* 130

19 *Of the Counting-houſe of the Kings houſhold, called the Greencloth, and by the way of the Wardrobe, &c.* 131

20 *Of the Court of the Lord Steward, Treaſurer and Controller of the Kings houſe, concerning felony by compaſſing, &c. to kill the King, &c.* 133

21 *Of the Court of the Lord Steward of the Kings houſe, or in his abſence of the Treaſurer and Controller of the Kings houſe, and Steward of the Marſhalſea, of Treaſon, Murder, and blood-ſhed within the Kings houſe.* ibid.

22 *Of*

Chap. Pag.

22 *Of the Court of the Admiralty proceeding according to the Civill law.* 134

23 *Of the Court of the Commiſsion under the Great Seal by force of the Statute of* 28 H. 8. cap. 15. *for Criminall and Marine cauſes proceeding according to the courſe of the Common Law.* 147

24 *Of Portmoots or Port-Courts.* 148

25 *Of the power and authority of Commiſsioners and others for maintaining and erecting of Beacons, Light-houſes, and Sea-marks, and concerning Watches.* ibid.

26 De Conſervatore ſeu cuſtode Treugarũ, *i.* induciarum & ſalvorum regis conductuum, *and incidently of the office, authority, and priviledge of Ambaſſadors, and of Leagues, Treaties, and Truces.* 152

27 *Of the Courts of the Juſtices of* Aſſiſe, *and of* Niſi Prius. 158

28 *Of Juſtices of* Oier & Terminer. 162

29 *Of the Courts of ſpeciall Juſtices of* Oier *and* Terminer, *concerning* 1. *Purveyors.* 2. *Miſdemeanors of Villains, &c.* 3. *Summes of money collected for houſes of Correction, &c.* 4. *Colledges, Hoſpitalls, Charitable uſes, &c.* 166

30 *Of Juſtices of* Gaol-delivery. 168

31 *Of*

Chap. Pag.

31 *Of the Court of the Seſſions of the Juſtices of the* Peace. 170

32 *Of the Court of Inquiry of the defaults of Juſtices of* Peace, &c. *concerning Riots, &c.* 184

33 *Of the Court of Juſtices in* Eire *or* Itinerant. ibid.

34 *Of the Court of Juſtices of* Trailebaſton. 186

35 *Of the Court of Wards and Liveries.* 188

36 *Of the Court of the Dutchy Chamber of Lancaſter at Weſtminſter.* 204

37 *Of the County Palatine of Cheſter.* 211

38 *Of the County Palatine of Durham.* 216

39 *Of the royall Franchiſe of Ely.* 220

40 *Of the County Palatine of Pembroke.* 221

41 *Of the Franchiſe of Hexham and Hexhamſhire.* 222

42 *Of the Courts of the Cinque Ports.* ibid.

43 *Of the Court of the Eſcheator, and of Commiſſioners for finding offices, &c.* 225

44 *Of the Courts of the Univerſities of Cambridge and Oxford.* 227

45 *Of the Courts of the Stanneries in Cornwall and Devon.* 229

46 *Of*

Chap. Pag.

46 *Of the Court of the Mayor of the Staple.* 237

47 *Of the Legall Courts and their Iuriſdictions within the Principality of Wales.* 239

48 *Of the Court of Equity before the Preſident and Councell of Wales, and the Marches of the ſame.* 242

49 *Of the Preſident and Councell in the North.* 245

50 *Of the Courts and their Iuriſdictions within the City of London, and*

1 *Of the Huſtings.* 247

2,3. *The two Courts of the Sheriffes.* ibid.

4 *The Court of Equity before the Lord Mayor, commonly called the Court of Conſcience.* 248

5 *The Court of the Mayor and Alderimen.* ibid.

6 *The Court of Orphans.* 249

7 *The Court of Common Councell.* ibid.

8 *The Court of the Wardmote.* ibid.

9 *The Court of Halimote.* ibid.

10 *The Court of the Chamberlain for Prentices.* 250

11 *The Court for the conſervation of the Water and River of Thames.* ibid.

12 *The Court of the Coroner in London.* ibid.

13 *The Court of the Eſcheator in London.* ibid.

14 *The*

Chap. Pag.

14 The Court of Policies and assurances in London. 250

15 The Court of the Tower of London. 251

6 The Iurisdiction, &c. of the Colledge of Physitians in London, &c. ibid.

Of the Courts of the Iustices assigned for the government of the Iewes. 254

Of the Court of Stancliffe and Friendlesse Wapentage. ibid.

51 Of the City of Westminster. 255

52 Of the City of Norwich. 256

53 Of the Court of the Tourn. 259

54 Of the Court of the Leet or view of Frank-pledge. 261

55 Of the County Court. 266

56 Of the Hundred Court. 267

57 Of the Court Baron. 268

58 Of the Court of Ancient Demesne. 269

59 Of the Court of the Coroner. 271

60 Of the Court of Pipowders. 272

61 Of the Court of the Clerk of the Market. 273

62 Of the Court of the Commissioners of Sewers. 275

63 Of the Court of the Commissioners upon the Statute of Bankrouts. 277

64 Of Cõmissioners for examination of witnesses. 278

Chap. Pag.

65 Curia curſus Aquæ apud Graveſend. 280

66 *Of the Kings Swanheard.* ibid.

67 *Of the Wardens Courts in the Eaſt, Weſt, and Middle Marches adjoyning to Scotland.* 281

68 *Of* Callais, *or* Callis Caletum. 282

69 *Of the Iſle of Man, and of the Law and Juriſdiction of the ſame.* 283

70 *Of the Iſles of Jerſey, and Garnſey, and of the Law and Juriſdiction of the ſame.* 286

71 *Of the Iſle of Wight.* 287

72 *Of the Iſland called Lindesfarn, &c. called alſo the Holy Iſland.* 288.

73 *Of the Foreſts, and the Juriſdiction of the Courts of the Foreſts.* 289

74 *Of the Eccleſiaſticall Courts,* viz.

1 *The Court of Convocation.* 321

2 *Concerning Subſcription.* 322

3 *Of the High Commiſſion in cauſes Eccleſiaſticall.* 324

4 *The Prerogative Court.* 335

5 *The Court of the Arches.* 337

6 *The Court of Audience.* ibid.

7 *The*

Chap. Pag.

7 *The Court of Faculties.* 337

8 *The Court of Peculiars,* Curia Peculiarium. 338

9 *The Consistory Courts.* ibid.

10 *The Court of the Archdeacon, or of his Commissary.* 339

11 *The Court of Delegates, and incidently of Appeals.* ibid.

12 *The Court of Commissioners of Review.* 341

The Courts of the Conservators of the priviledges of St. Johns *of* Jerusalem. ibid.

75 *Of Scotland.* 345

76 *Of the Kingdome of Ireland.* 349

The Epilogue.

A Proeme

DEO,

PATRIÆ,

TIBI.

Proœmium.



N the two former parts of the *Inſtitutes* we have principally treated *De communibus placitis*, and of thoſe two great Pronouns [*Meum* & *Tuum.*] In the Third we have handled *Placita Coronæ*, and Criminall cauſes. But becauſe *Rerum ordo confunditur, ſi unicuique jurisdictio non ſervetur*, We in this Fourth and laſt part of the *Inſtitutes* are to ſpeake of the Juriſdiction of the Courts of Juſtice within this Realm. *Regul. 1.*

Juriſdictio eſt authoritas judicandi ſive jus dicendi int' partes de actionibus perſonarum & rerum ſecundum quod deducta fuerunt in judicium per authoritatem ordinariam ſeu delegatam: And again, [b] *Juriſdictio eſt poteſtas de publico introducta cum neceſſitate juris dicendi.* It is derived of *Jus*, and *ditio*, i. *poteſtas juris.* *Juriſdictio quid?* Bract. l. 5. fo. 400, 401. Brit. fo. 1. & 32. Fleta lib. 6. ca. 36. unde, &c. [b] Lib. 10. f. 73. a. En le caſe del Mariſt alſea.

[c] *Curia* hath two ſeverall ſignifications, and accordingly it is ſeverally derived. It ſignifieth the Kings Court, where his royall perſon, and his honourable houſhold doe reſide, and is all one with *Palatium Regium*, and is derived ἀπὸ τοῦ κυεῖν, of the Lord, becauſe the Soveraign Lord reſideth there. It alſo ſignifieth a Tribunall, or Court of Juſtice, as here it doth, and then it is derived *à cura, quia eſt locus, ubi publicas curas gerebant.* [c] *Curia quid?* Feſtus.

Of Juriſdictions ſome be Eccleſiaſticall, and ſome Civill, or Temporall: of both theſe ſome be primitive, or ordinary without commiſſion; ſome derivative, or delegate by commiſſion. Of all theſe, ſome be of record, and ſome not of record; ſome to enquire, hear, and determine, ſome to enquire onely; ſome guided by one law, ſome by another; the bounds of all and every ſeverall Courts being moſt neceſſary to be known. For as the body of man is beſt ordered, when every particular member exerciſeth his proper duty: ſo the body of the Commonwealth is beſt governed, when every ſeverall Court of Juſtice executeth his proper juriſdiction. But if the eye, whoſe duty is to ſee, the hand, to worke, the feet, to goe, ſhall uſurp, and incroach one upon anothers work: As for example, the hands or feet, the office

of the eye to see, and the like; these should assuredly produce disorder, and darkness, and bring the whole body out of order, and in the end to destruction: So in the Commonwealth (Justice being the main preserver thereof) if one Court should usurp, or incroach upon another, it would introduce incertainty, subvert Justice, and bring all things in the end to confusion.

Now when I considered how much it would tend to the honour of the Kings Majesty, and of his Laws, to the advancement of Justice, the quiet of the subiect, and generally to the good of the whole Commonwealth (no King in the Christian world having such Tribunals, and Seats of justice, as his Maiesty hath; which, God willing, in this Treatise we shall make to appear) that all the high, honourable, venerable, and necessary Tribunals, and Courts of Justice within his Maiesties Realms and Dominions, as well Civill as Ecclesiasticall, might be drawn together, as it were, in one map, or table, (which hitherto was never yet done) that the admirable benefit, beauty, and delectable variety thereof might be, as it were, *uno intuitu* beholden, and that the manifold jurisdictions of the same might be distinctly understood, and observed. We having (as elswhere we have said) collected some materials towards the raising of this great and honourable building, and fearing that they should be of little use after my decease, being very short, and not easily of others to be understood, if I should have left them as they were;

In the Preface to the First part of the Institutes.

Out of the duty that I owe to his most excellent Maiesty, and my zeal, and affection to the whole Commonwealth, I have adventured to break the ice herein, and to publish more at large those things which in our reading we had observed concerning Jurisdiction of Courts. I confesse it is a labour of as great pains, as difficulty: for as in an high and large building, he that beholds the same after it is finished, and furnished, seeth not the carriages, scaffolling, and other invisible works of labour, industry and skill in Architecture: so he that looketh on a booke full of variety of important matter, especially concerning sacred Laws, after it is printed and fairly bound and polished, cannot see therein the cariage of the materials, the searching, finding out, perusing, and digesting of authorities in law, Rols of Parliament, judiciall Records, Warrants in Law, and other invisible works, *tam laboris, quam *ingenii*: yet I was the rather incouraged thereunto, both because I have published nothing herein, but that which is grounded upon the authorities and reason of our books, Rols of Parliament, and other judiciall Records, and especially upon the resolution of the Judges of later times upon mature deliberation in many cases never published before; wherewith I was well acquainted, and which I observed and set down in writng, while it was fresh in memory.

* *Minerva, quasi nervos minuens.*

There be amongst the Kings Records divers and many Rols, whereof you shall find little or no mention (that we remember) in our books, viz. *Rot. Parliament. Rot. Placitorum Coronæ, Rot. Placitorum Parliament. Rot. Claus. Rot. Brevium, Finium, Inquisitionum, Liberationum, Rot. Cartarum, Escheatriæ, Pat. Rot. Ordinationum, Rot. Franciæ, Scotiæ, Vasconiæ, & Almaniæ, Rot. Romana, Rot. Judæorum, Rot. Ragman, Brangwin, Rot. Contrariensium*

trarienſium (And the reaſon of the naming of this Rol thus, was, for that *Thomas* Earle of Lancaſter (a man ſingulary beloved) taking part with the Barons againſt King *E.* 2. in hatred of the *Spencers*, it was not thought ſafe for the King, in reſpect of their power and greatneſſe, to name them Rebels or Traitors, but *Contrarients*) and ſome others. In this and other parts of our Inſtitutes we cite divers Records out of many of theſe Rols: Herein, as in the reſt of our works, you ſhall obſerve, that in the courſe of our reading we tooke all in our way, and omitted little or nothing, for there is no knowledge (ſeemeth it at the firſt of never ſo little moment) but it will ſtand the diligent obſerver in ſtead at one time or other.

And thus for all our paines, wiſhing the benevolent reader all the profit, we (*favente Deo, & auſpice Chriſto*) begin with the High, and moſt Honourable Court of Parliament.

OF

THE HIGH AND MOST HONOURABLE COURT Of PARLIAMENT.

CAP I.

Of what Perſons this Court conſiſteth.

THis Court conſiſteth of the Kings Majeſty ſitting there as in his Royall politick capacity, and of the three Eſtates of the Realm: viz. Of the Lords Spirituall, Archbiſhops and Biſhops, being in number 24, who ſit there by ſucceſſion in reſpect of their Counties, or * Baronies parcell of their Biſhopricks, which they hold alſo in their politick capacity; And every one of theſe when any Parliament is to be holden, ought, ex debito juſtitiæ, to have a Writ of Summons. The Lords Temporall, Dukes, Marquiſſes, Earls, Viſcounts, and Barons, who ſit there by reaſon of their dignities which they hold by deſcent or creation in number at this time 106: and likewiſe every one of theſe being of full age ought to have a Writ of Summons ex debito juſtitiæ. The third eſtate is the Commons of the Realme, whereof there be [a] Knights of Shires or Counties, Citizens of Cities, and Burgeſſes of Burghes. All which are reſpectively elected by the Shires or Counties, Cities and Burghes, by force of the Kings Writ ex debito juſtitiæ, and none of them ought to be omitted: and theſe repreſent all the Commons of the whole Realme, and truſted for them, and are in number at this time 493.

See the firſt part of the Inſtitutes, Sect. 164. for the ancient and latter names of Parliament, and the antiquity thereof. *Modus tenendi Parl. cap. 2.*

* All the Biſhopricks of England be of the Kings progenitors incorporation, to have ſucceſſion and foundation, *Tenendum per comitatûs ſeu Baroniam*, and were of ancient time donative, and theſe Biſhops are called by Writ to the Parliament as other Lords of Parliament be. Rot. Clauſ. 9 H. 4. m. 1. Glanvil lib. 7. ca. 1. verſ. finem. Bract. lib. 5. fo. 412. 427, 2. 10 H. 4. 6. 21 E. 3. 60. 17 E. 3. 40. 48. 73. *Dicetus* Deane of London. [a] 5 R. 2. cap. 4. ſtat. ult. ſo they are ranked. Prov. 11. 14. *Salus ubi multa conſilia.* Rot. Parl. 7 H. 4. nu. 2. *Multorum conſilia requiruntur in magnis.*

Of what number.

In the beginning Romulus ordained an hundred Senators for the good government of the Commonwealth: afterwards they grew to 300, and ſo many were of the Houſe of Commons in Forteſcues time; who treating with what gravity Statutes are made, ſaith; Dum non unius, aut centum ſolum conſultorum virorum prudentia, ſed plus quam trecentorum electorum hominum, quali numero olim Senatus Romanorum regebatur, ipſa ſtatuta edita ſunt. Feſtus. Forteſcue c. 18. fo. 40.

Erant autem Senatores majorum gentium, & Senatores minorum gentium, ex patriciis & nobilibus electi, hii ex populo. Cicero lib. 1. Epiſt. famil.

And it is obſerved that when there is beſt appearance, there is the beſt ſucceſſe in Parliament. At the Parliament holden in the ſeventh year of the reign of H. 5. holden before the Duke of Bedford, Guardian of England, of the Lords Spirituall and Temporall there appeared but thirty in all: at which Parlia- Rot. Parl. 7 H. 5.

ment there was but one Act of Parliament paſſed, and that of no great weight: In Anno 50 E. 3. all the Lords appeared in perſon, and not one by Proxie. At which Parliament, as it appeareth in the Parliament Roll, ſo many excellent things were ſped and done, as it was called bonum Parliamentum.

Rot. Parl. 50 E. 3. Bonum Parliamentum.

And the King and theſe three Eſtates * are the great Corporation or Body politick of the Kingdome: and do ſit in two houſes, viz. the King and Lords in one houſe called the Lords Houſe, and the Knights, Citizens and Burgeſſes in another houſe, called the Houſe of Commons.

* 14 H. 8. 3. per Fineux Hollenſh. Chron. 34 H. 8. 556. 957. Dier 38 H. 8. 60, 61. 2 & 3 E. 6. ca. 36.

[a] For this word [Commons] ſee the ſtatute of 18 E. 3. whereby it is provided that the Coroners of Counties ſhall be choſen in full County per les Commons de meſme les Counties. Commons are in legall underſtanding taken for the frank Tenants or Free holders of the Counties. [b] And whoſoever is not a Lord of Parliament and of the Lords Houſe, is of the Houſe of the Commons, either in perſon, or by repreſentation, partly coagmentative, and partly repraſentative.

[a] 28 E. 3. cap. 6. Regiſt 177. F. N. B. 164. k. Pl. R. 232. Stanf Pl. Cor. 49

[b] For this diſtinction, ſee the ſecond part of the Inſtitutes, Mag. Cart. Verb. [per pares] fo. 29. 2.

But of ancient time both Houſes ſate together. In 8 H. 4. an Act of Parliament concerning the ſucceſſion of the Crowne intailed to H. 4. whereunto all the Lords ſeverally ſealed, and Sir John Tebetot the Speaker in the name of the Commons put to his ſeale.

Note, that in the Letters to the Pope by all the Nobility of England at the Parliament holden in 21 E. 1. the concluſion is this, In cujus rei teſtimonium ſigilla noſtra tam pro nobis quam pro tota Communitate præd. Regni Angliæ præſentib. ſunt appenſa. Hereby I gather that at this time the Commons had no Speaker, but both Houſes ſat together, for if the Commons had then had a Speaker, they would have appointed him to have put to his ſeale for them, as in 8 H. 4. they did. Certaine it is, that at the firſt both Houſes ſat together, as it appeareth in the Treatiſe De modo tenendi Parliamentum. Vide Rot. Parl. 5 E. 3. nu. 3. and in other places in the ſame Roll, and in 6 E. 3. in divers places it appeareth that the Lords and Commons ſat together, and that the Commons had then no continuall Speaker, but after conſultation had, they agreed upon ſome one or more of them that had greateſt aptitude for the preſent buſineſſe to deliver their reſolution, which brought great delayes of proceeding, and thereupon the Houſes were divided, and the ſureſt marke of the time of the diviſion of them is, when the Houſe of Commons at the firſt had a continuall Speaker, as at this day it hath.

Of ancient time both Houſes ſat together.

Rot. Parl. 50 E. 3. nu. 8.

After the diviſion the Commons ſat in the Chapter houſe of the Abbot of Weſtminſter.

And this Court is aptly reſembled to a Clock, which hath within it many wheels, and many motions, all as well the leſſer as the greater muſt move: but after their proper manner, place, and motion; if the motion of the leſſer be hindered, it will hinder the motion of the greater.

The Names.

See the firſt part of the Inſtitutes, Sect. 164. ubi ſupra.

[a] Breve Parliam.
[b] Brevia originalia de vaſto, &c.
[c] W. 1. in exordio.
[d] Glanvil. lib. 8. cap. 10. & lib. 13. cap. 32. Lib. 9. cap. 10. Bracton lib. 3. tract. 2. cap. 3.
[e] Æneidos. 10. conciliũ deorum.

This Court is called by ſeverall names, as anciently [*Witenage Mote*] Conventus ſapientum; Parliamentum, of which we have ſpoken in another place; Comitia, à coeundo, quia coeunt ibi deliberaturi de [a] arduis & urgentibus negotiis regni, & ſtatum, & defenſionem regni, & Eccleſiæ Anglicanæ concernentibus. [b] Commune concilium regni, [c] Generale concilium regni, & [d] Concilium regni, and Aſſiſa ab aſſidendo, as Aſſiſa de Clarendon 22 H. 2.

Upon ſome of the Records and Rolls of the Parliament it is written,

Perlege quæ regni clariſſima Conciliorum
Sunt monumenta, aliter nil præter ſomnia cernis.

[e] And Virgil writing of the Parliament of the Gods uſeth the ſame word of Concilium in the ſame ſenſe.

Panditur interea domus omnipotentis Olympi,
Conciliumq; vocat divûm pater, atq; hominum rex, &c.

Tacitus in vita Agricolæ in the time of the Britons calleth it Conventus, à conveniendo.

Ingulphus

Ingulphus, who died before 1109 ſaith, Rex Eldredus convocavit magnates, Epiſcopos, proceres, & optimates ad tractandum de publicis negotiis regni. Tully calleth it, Conſeſſum Senatorum, à conſidendo. 34 H.6.40.2. Priſot.

Parliaments in Scripture.

And the like Parliaments have been holden in Iſrael, as it appeareth in the holy Hiſtory. Convocavit David omnes Principes Iſrael, duces, tribunos, & præpoſitos turmarum, tribunos, centuriones, & qui præerant ſubſtantiis & poſſeſſionibus regis, filioſque ſuos, cum eunuchis, & potentes, & robuſtiſſimos quoſque in exercitu Jeruſalem. And when they were all aſſembled, the King himſelfe ſhewed the cauſe of calling that Parliament. Audite me fratres mei, & populus meus, cogitavi ut ædificarem in qua requieſceret arca fœderis Domini, & ad ſcabellum pedum Dei noſtri, & ad ædificandum omnia præparavi. &c. [b] And the like Parliament did King Solomon ſon of King David hold. Congregavit Solomon majores natu Iſrael, & cunctos principes, tribunos, & capita familiarum de filiis Iſrael in Ieruſalem, &c. [c] There was alſo a Parliament holden in the time of the Judges. Convenit univerſus Iſrael ad civitatem quaſi homo unus eadem mente, & uno conſilio, &c. And that Parliament builded on ſuch unity had bleſſed ſucceſſe. 1 Chron. c. 28.

Preparation.
Actus activorum ſunt in patiente diſpoſitio, ſaith the Philoſopher.
[b] 2 Chron. c. 5. 2.
[c] Judges 20. 11. Conventus.

Of this Court of Parliament the King is Caput, principium & finis. And as in the naturall body when all the ſinews being joyned in the head do joyne their forces together for the ſtrengthening of the body, there is ultimum Potentiæ: ſo in the politick body when the King and the Lords Spirituall and Temporall, Knights, Citizens, and Burgeſſes, are all by the Kings command aſſembled and joyned together under the head in conſultation for the common good of the whole Realm, there is ultimum Sapientiæ. Modus tenend. Parl.

What properties a Parliament man ſhould have.

It appeareth in a Parliament Roll, that the Parliament being, as hath been ſaid, called Commune concilium, every member of the Houſe being a Counſeller, ſhould have three properties of the Elephant; Firſt, that he hath no gall: Secondly, that he is inflexible, and cannot bow: Thirdly, that he is of a moſt ripe, and perfect memory: which properties, as there it is ſaid, ought to be in every member of the great Councell of Parliament. Firſt, to be without gall, that is, without malice, rancor, heat, and envy. In Elephante melancholia tranſit in nutrimentum corporis. Every gallish inclination (if any were) ſhould tend to the good of the whole body, the Commonwealth. Secondly, that he be conſtant, inflexible, and not to be bowed, or turned from the right, either for feare, reward, or favour, nor in judgement reſpect any perſon. Thirdly, of a ripe memory, that they remembring perils paſt, might prevent dangers to come, as in that Roll of Parliament it appeareth. Whereunto we will adde two other properties of the Elephant, the one, that though they be Maximæ virtutis, & maximi intellectus, of greateſt ſtrength, and underſtanding, tamen gregatim ſemper incedunt, yet they are ſociable, and go in companies: for animalia gregalia non ſunt nociva, ſed animalia ſolivaga ſunt nociva. Sociable creatures that go in flocks or heards are not hurtfull, as Deere, Sheep, &c. but Beaſts that walke ſolely, or ſingularly as Beares, Fores, &c. are dangerous and hurtfull. The other, that the Elephant is Philanthropos, homini erranti viam oſtendit: and theſe properties ought every Parliament man to have. Rot. Parl. anno 3 H.6. nu. 3. Virg. Georg. Illum non populi faſces, non purpura regum Flexit. Ariſtotle. Bartholomæus.

Of Records of Parliament.

The reaſon wherefore the Records of Parliament have been ſo highly extolled, is, for that therein is ſet down in caſes of difficulty, not onely the judgment, or reſolution, but the reaſons, and cauſes of the ſame by ſo great advice. [a] It is *Mich. 5 E. 1. in communi banco. Rot. 100. Linc. Paſc. 19 E. 1.

Rot. 145. Abbot de Selby. Paſch. 28 E. 1. Coram Rege Rot. between the King and Venables in Quare Impedit. Mich. 3 E. 2. Coram Rege Rot. 6. and many others where the cauſes and reaſons pro & contra have been ſet down, &c. 6 E. 3. fo. 5. per Herl. 3 E. 4. b. 7. 2. 19 H. 6. 63. 2. per Fray.

true

true that of ancient time in judgements at the Common law, in caſes of difficulties either criminall, or civill, the reaſons and cauſes of the judgement were ſet down in the Record, and ſo it continued in the reigns of E. 1. and moſt part of E. 2. and then there was no need of Repoꝛts: but in the reign of E. 3. (when the law was in his height) the cauſes and reaſons of judgements, in reſpect of the multitude of them, are not ſet down in the Record, but then the great Caſuiſts and Repoꝛters of caſes (certain grave and ſad men) publiſhed the caſes, and the reaſons and cauſes of the judgements or reſolutions, which from the beginning of the reign of E. 3. and ſince we have in print But theſe alſo, though of great credit, and excellent uſe in their kind, yet far underneath the Authority of the Parliament Rols, repoꝛting the Acts, Judgements, and reſolutions of that higheſt Court.

22 E. 4. 18. per Huſſey. Rot. Par. 19 E. 1. Rot. 12. Margery Weylands caſe. Nota quia optime, &c.

The Summons of Parliament.

Prov. 13. 16. Sapiens omnia agit cum conſilio. Vide infra.

The King de adviſamento concilii (for ſo be the woꝛds of the Writ of Parliament) reſolving to have a Parliament, doth out of the Court of Chancery ſend out wꝛits of Summons at the leaſt forty dayes beforꝛe the Parliament begin: Every Lord of Parliament, either Spirituall, as Archbiſhops, and Biſhops, or Temporall, as Dukes, Marquiſſes, Earls, Viſcounts and Barons, Peers of the Realm, and Lords of Parliament ought to have ſeverall wꝛits of Summons.

Theſe wꝛits of Summons you ſhall find in former times in the cloſe Rol, for they are not in the Regiſter, and in that Rol are the wꝛits de expenſis militum, civium & burgenſium, & procuratorum cleri, and theſe are in the Regiſter alſo.

Temporall Aſſiſtants.

* Regiſt. 261. F. N. B. 229. a. ib. called Attendants.

And all the Judges of the Realm, Barons of the Exchequer of the Coif, the Kings learned Councell, * and the Civilians Maſters of the Chancery are called to give their aſſiſtance and attendance in the upper houſe of Parliament, but they have no voices in Parliament; and their wꝛits differ from the wꝛits to the Barons: for their wꝛits be, Quòd interſitis nobiſcum & cum cæteris de concilio noſtro (and ſometimes nobiſcum onely) ſuper præmiſſis tractaturi, veſtrumque conſilium impenſuri; but the wꝛit to the Barons is, Quod interſitis cum prælatis, magnatibus & proceribus ſuper dictis negotiis tractaturi, veſtrumque conſilium impenſuri.

Spirituall Aſſiſtants. Procuratores cleri.

Mod. tenend. Parl. ca 2. Rot. Claus. 8 E. 2. m. 15. Dorſ. Ib 5 E. 2. m. 15. Ib. 11 E. 3. part. 1. m. 1. Ib. 22 E. 3. part. 2. m. 3. Ib. 36 E. 3. m. 16. Rot. Par. 18 E. 3. nu. 1. 3 R. 2. 21 R. 2. 21 R. 2. Procuratores Cleri. Reg. 261. a. F. N. B. 229. a. Procuratores de Clero. In faſcicul. literarum procurat. &c. 13 H. 4. & 5 H. 5. See hereafter tit. Proxies.

And in every wꝛit of Summons to the Biſhops, there is a clauſe requiring them to ſummon theſe perſons to appear perſonally at the Parliament, which is in theſe woꝛds, Præmonientes Decanum & capitulum Eccleſiæ veſtræ Norwicenſis, ac Archidiaconos totumque clerum veſtræ Dioceſ. quòd iidem Decani & Archidiaconi in propriis perſonis ſuis, ac dictum capitulum per unum, idemque clerus per duos procuratores idoneos plenam & ſufficientem poteſtatem ab ipſis capitulo & clero diviſim habentes prædict' die & loco perſonaliter interſint ad conſentiendum hiis quæ tunc ibidem de communi conſilio dicti regni noſtri divina favente clementia contigerit ordinari: And the Biſhop under his ſeal make Certificate accoꝛdingly. And theſe are called Procuratores cleri, and many times have appeared in Parliament as Spirituall Aſſiſtants, to conſider, conſult, and conſent, ut ſupra, but had never voices there, becauſe they were no Lords of Parliament. Some have thought, that becauſe the Clergy were not party to the election of the Knights, Citizens, and Burgeſſes, that theſe Procuratores Cleri were appointed to give their conſent for them, but then they ſhould have had voices, which queſtionleſſe they never had. And by the woꝛds of the wꝛit it was to conſent to thoſe things which by the Common Councell of the Realm ſhould happen to be oꝛdained, ſo as their conſent was onely to ſuch things as were oꝛdained de communi concilio Regni, and that there might be an Act of Parliament without them: and in many caſes multitudes are bound by Acts of Parliament which are not parties to the elections of Knights, Citizens, and Burgeſſes, as all they that have no freehold

freehold, or have freehold in Auncient demeſne, and all women having freehold or no freehold, and men within the age of one and twenty yeares, &c. And it appeareth by the Treatiſe De modo tenendi Parliament', &c. that the Prelates of the Clergy ſhould appeare, cum præſentia eorum ſit neceſſaria (which proveth that they were voiceleſſe Aſſiſtants onely) and having no voices, and ſo many learned Biſhops having voices, their preſence is not now holden neceſſary.

It is to be obſerved that in the writs of Parliaments to the Biſhops (being Lords Eccleſiaſticall ſecular) they are named by their Chriſtian names, and name of their office; as, Rex, &c. Reverendiſſimo in Chriſto patri Johanni eadem gratia Archiepiſcopo Cantuar. or Rex, &c. Reverendo in Chriſto patri Johanni Epiſcopo Norwicenſ. &c. But if the Sirname be added it makes not the writ vicious. 12 E. 3. fol. 480. 31 E. 3. fol. 342. 32 E. 3. fol. 291. 7 H. 6. 27. 21 E. 4. 15. For theſe regular Lords of Parliament, and when they ceaſed, ſee hereafter pa.

But the Abbots and Priors being Lords of Parliament, religious and regular, might be named by the name of their office only, as, Rex dilecto ſibi in Chriſto Abbati Sancti Edmondi de Bury, &c. 7 E. 4. fol. 163. 7 H. 6. 29. 11 E. 3. fol. 473.

A Duke, a Marquiſſe, an Earl, and Viſcount are regularly named by their Chriſtian names, and the names of their dignities, and rarely (yet ſometimes) by their Sirnames; nor are they named by their Knighthood, if they have any, but rarely. If a Baron be a Knight, he is regularly named by his Chriſtian name, Sirname, and by Miles, or Chivalier, and his Barony. If he be no Knight, then he is named by his Chriſtian name, and the name of his Barony; but if the Sirname be added, it maketh not the writ vicious. And this holdeth as well where the Baron taketh his dignity of a place, as where he taketh it of his Sirname; but where the Sirname is dignified, there to make a formall writ, it is good to adde the place of his Barony.

Of ancient time the Temporall Lords of Parliament were commanded by the Kings writ to appeare, In fide & homagio, quibus nobis tenemini, and in the reigne of E. 3. in fide & ligeancia, and ſometime in fide & homagio, but at this day conſtantly in fide & ligeancia, becauſe at this day there are no feodall Baronies, in reſpect whereof homage is to be done, which in 21 E. 3. was the true cauſe of this alteration.

The Eccleſiaſticall Barons ſecular or regular were commanded by the Kings writ to be preſent, in fide & dilectione, quibus nobis tenemini, as the Biſhops are at this day.

We find in the Rols of Parliament a writ in Anno 23 R. 2. and ſucceſſively in every Parliament untill and in the fifth yeare of H. 6. amongſt the Barons that came to the Parliament, it is ſaid Magiſtro Thomæ de la Warre, and ſome ſay that the addition of Magiſter, was to diſtinguiſh him from them that were Knights: as in the Roll of 1 E. 4. amongſt the Barons it is ſaid, Johanni de Audely armigero, for that the reſt of the Barons (ſaving himſelf) and the Lord Clynton were Chivaliers. And others doe hold that he was of the Clergy before the dignity deſcended to him, and in that reſpect he was called Magiſter.

In the Roll of 5 H. 5. and in many ſucceeding Rols we find Baro applied to the Lord of Greyſtock, as Radulpho Baroni de Greyſtock and Iohanni Baroni de Greyſtock, and to few other.

In many Rols we find the Barons that were Knights, named Chivaliers, wherein we obſerved, that they liked to be called Chivaliers rather then Milites after the legall word (for Eques auratus is not uſed in Law.) For example, In anno 1 E. 4. Edmundo Grey de Ruthin Chivalier, &c. and under ſubſcribed thus, Milites omnes, exceptis Iohanne de Audely armigero, & Iohanne domino de Clynton. And in 3 E. 4. all the Barons (ſaving the Lord Scales) have the additions of Chivaliers, and ſubſcribed thus, Equites aurati omnes præter dominum Scales. And in 3 E. 4. all the Barons have the addition of Chivaliers, and therefore ſubſcribed thus, Equites aurati omnes. Hereby and by many others it appeareth that the Barons if they were Knights, were ſo named, and that they were not named Chivaliers unleſſe they were Knights. But in the reigne of H. 8. and 11 E. 3. fol. 473.

since, Barons are named Chivaliers in the writ of Summons, though they be no Knights.

De Baneretto, & unde.

Baner legally Banerium, vexillum, Banerher: unde Banerherius or Banerius, i. Baro, vexillarius major, & Banerrettus a diminutive of Banerius, vexillarius minor. A Baron is called Banerherius or Banerius of the Baner, (being the Ensigne of his honour) serveth for a guide and direction: so the Baron observing the end of his Nobility should be an example and guide to others, as well in war as in peace, in all notable habilities and vertues, and so of the Baneret: both the Baron and the Baneret hath one kind of Baner: for the Baneret is created in the field in the Kings Host, and (amongst other things) by cutting the sharpe point of his Pennon, and making it a Baner *i.* Vexillum Baronis: so as the Baneret hath the Baner, but not the dignity of the Baron. And this doth notably appeare by the case in 22 E. 3. the very words of which resolution I will first set downe, and then the effect, Un fuit challenge pur ceo que il fuit a Baner, & non allocatur: car fil soit a baner, & ne tient per Barony, il serra in Assise. That is, one was challenged because he had the Baner and was a Baneret, & non allocatur by the rule of the Court, because albeit he had the Baner, yet ne tient per Barony, that is, he was no Baron of Parliament.

22 E. 3. 18. tit. Challenge, 119.

Nota seriem temporis, John Coupland a valiant Leader in Anno 20 E. 3. neer Durham, at Nevils Castle, took in aperto prælio, David the second, King of Scots; for which King E. 3. created him Knight Baneret, and gave him lands and livings, and in 22 E. 3. the case in law fell out.

For this order of Knighthood see Camdens Britannia 124, and for this case of Sir John Coupland, Camden in Linc. pag. 618. See 35 H. 6. fo. 46. There the challenge was that he was a Baneret a Lord of Parliament. See 48 E. 3. 30. 48 Ass. pl. ultimo. Lib. 6. fo. 55. But Sir John Coupland was not the first Baneret that England had, as * some have thought, and was with us before the reigne of E. 3. for in Pelle exitus anno 8 E. 2. in Scaccario Johannes de Cromlewele Banerettus. And ex compoto Garderobæ Anno 9 E. 2. Nicholaus de Gray was declared by Writ of E. 2. to be de familia regis tanquam Banerettus, both for his precedency and fallery.

* Speed. See hereafter, pag.

For summoning of the Commons a Writ goeth out to the Lord Warden of the Cinque Ports for the election of the Barons of the same, who in law are Burgesses, and to every Sheriffe of 52 Counties in England and Wales for the choise and election of Knights, Citizens, and Burgesses within every of their Counties respectively.

The beginning of the Parliament.

Rot. Parl. 3 H. 6. nu. 1. H. 6. sat in Parliament when he was 3 or 4 years old, and so did he in the 6 and 8 yeare of his reign. The Royall Person represented two wayes.

At the retorne of the Writs the Parliament cannot begin but by the Royall presence of the King either in person or by representation. By representation two wayes, either by a Guardian of England by Letters Patents under the Great Seale when the King is in remotis out of the Realme: or by Commission under the Great Seale of England to certaine Lords of Parliament representing the person of the King, he being within the Realme in respect of some infirmity.

[a] Roc. pat. An. 14. E. 3. m. 18. The Patent of the Gardianship.

[a] The patent of the Office of a Gardien of England reciteth his speedy going beyond sea, or in remotis, or urgent occasions and the cause thereof. Nos quòd pax nostra tam in nostra absentia quam præsentia inviolabiliter observetur, & quòd fiat communis justitia singulis conquerentibus in suis actionibus & querelis, de fidelitate dilecti & fidelis nostri Edwardi ducis Cornubiæ, & comitis Cestriæ filii nostri primogeniti plenarie confidentes, constituimus ipsum custodem dicti regni nostri ac locum nostrum tenent' in eodem regno quamdiu in dictis transmarinis partibus moram fecerimus, vel donec inde aliud duxerimus. (And this is that capitalis Justiciarius mentioned in Mag. Carta cap. 11. when the King is extra regnum) with a clause of assistance. But yet if any Parliament is to be holden, there must be a speciall Commission to the Gardien, to begin the Parliament, and to proceed therein: but the Teste of the Writ of Summons shall be in the Gardiens name.

See Rot. Parl. 25 E. 3. nu. 10.

A Parliament was holden in quinto quinto, viz. anno 5 H. 5. before John Duke of Bedford, brother and Lieutenant to the King, and Gardien of England, and was ſummoned under the Teſte of the Gardien or Lieutenant [* It is enacted, that if the King being beyond the ſeas, cauſe to ſummon a Parliament in this Realme, by his Writ under the Teſte of his Lieutenant: and after ſuch ſummons of Parliament gone out of the Chancery, the King arriveth in this Realm: that for ſuch arriuall of the ſame King ſuch Parliament ſhall not be diſſolved, but the Parliament ſhall proceed without new ſummons.]

Rot. Parl. 5 H. 5. nu. 1.

* 8 H. 5. cap. 1. in print.

[a] In 3 E. 4. a Parliament was begun in the preſence of the King and prorogued untill a further day: and then William Archbiſhop of Yorke the Kings Commiſſary by Letters Patents held the ſame Parliament and adjourned the ſame, &c. The cauſe of the ſaid prorogation was, for that the King was enforced to goe in perſon to Glocesterſhire to repreſſe a rebellion there.

[a] Rot. 3. 13, 14.

As hath been ſaid, the Kings perſon may be repreſented by Commiſſion under the Great Seale to certain Lords of Parliament authorizing them to begin the Parliament, and both the Gardien and ſuch Commiſſioners do ſit on a forme placed neere to the degrees that goe up to the Cloth of Eſtate.

Like Letters Patents to the Earl of Warw. in the ſame Parliament. nu. 15.

And in 28 Eliz. the Queene by her Commiſſion under the Great Seale bearing date the 28 of October anno 28, reciting that ſhe for urgent occaſions could not be preſent in her Royall perſon, did authorize John Whitgift Archbiſhop of Canterbury, William Baron of Burghley Lord Treaſurer of England, and Henry Earle of Derby Lord Steward of the Houſhold then being, Ad inchoandum, &c. tenendum, &c. & ad procedendum, &c. & ad faciend omnia & ſingula, &c. nec non ad Parliamentum adjornandum & prorogandum, &c. which Commiſſion is entred in hæc verba in the Journall Book in the Lords Houſe, and in the upper part of the page above the beginning of the Commiſſion is written, Domina Regina repræſentatur per Commiſſionarios, viz. &c. The 29 day of October, the ſaid Commiſſioners ſitting on a forme before the Cloth of Eſtate after the Commiſſion read, adjourned the Parliament untill the 15 of February following, &c. And this Parliament began the 29 of October, and not the 15 of February, wherein the printed Booke is miſtaken, for then the Parliament began, and was prorogued.

Parl. 28 Eliz. See an excellent preſident hereof, Rot. clauſ. Anno 8 E. 2. 7. Sept. m. 26. & 1 pars pat. An. 8 E. 2. m. 26. with a commandement of attendance.

Simile 10 E. 2. 2 pars. pat. m. 20. 13 E. 3. nu. 1. ſtat. 2. in abſentia Gardiani Angliæ.

Thus much ſhall ſuffice, when the Kings perſon ſhall be repreſented.

But when the Parliament ſhall not begin at the day of the retorne, but for certaine urgent cauſes then to be prorogued untill another day, and then to be holden before the King, there is a ready way for the effecting thereof, and that is by Writ Patent under the whole Great Seale, reciting the Writ of Summons, and to bear Teſte before the retorne thereof and ſigned above with the Kings ſigne Manuall, and directed Prælatis, magnatibus, proceribus hujus regni, ac militibus, civibus, et burgenſibus convocatis et electis ad hoc Parliamentum pro quibuſdam cauſis et conſiderationibus, &c. to prorogue the Parliament to a certaine day, and at the retorne of the Summons, this Writ being read in the Upper Houſe before certaine of the Lords of Parliament, and of the Commons there aſſembled, and prorogation made accordingly, the Parliament is prorogued: And this was ſo done in Anno 1 Eliz. the retorne of the Summons of Parliament being the 9 of October and by ſuch a Writ it was prorogued untill the 25 of February following, at what time in judgement of law the Parliament did begin, and was holden, and not on the 9 of October, as it was adjudged. A like prorogation was made by the Queene the Writ of the Parliament holden Anno 5 Eliz. at both which dayes of prorogation, the Parliament did hold before the Queen her ſelfe, untill the diſſolution of the ſame, which Writs are entred in hæc verba in the Journall book.

Prorogued Writ Patent.

Dier. 3 El. 203. a. And herein the printed book of ſtatutes erreth, for here the Parliament begun not.

What is to be done the firſt day of the Parliament.

On the firſt day of the Parliament, the King or moſt commonly the Lord Chancellor or Keeper of the Great Seale in the preſence of the Lords and Commons do ſhew the cauſes of the calling of this High Court of Parliament, but the

King may appoint any other: as many times, the Chiefe Iuſtice of England, and ſometimes [a] ſome other, as may appeare in the Parliament Rols, onely one I will tranſcribe.

[b] At this day Sir Henry Green the Kings Chiefe Iuſtice (although the Lord Chancellor were preſent) in the preſence of the King, the Lords and Commons, declared the cauſes of the Parliament [c] in Engliſh, viz. for redreſſe of matters touching the Church, for obſervation of the peace, for the affairs of Scotland, for the inhanſing of the price of Wool, &c. [d] But at the next meeting Simon Langham Biſhop of Ely ſhewed the cauſes of Parliament, and in the end, he did in the Kings name require the Commons to make choiſe of a learned and diſcreet man to be their Speaker: and when a Biſhop was Lord Chancellor, he took a Text of Scripture which he repeated in Latin, and diſcourſed upon the ſame. But when a Iudge was Lord Chancellor, he took no text, but in manner of an Oration ſhewed ſummarily the cauſes of the Parliament.

22 E.3. Sir *William Thorpe* Chief Iuſtice.
[a] 17 E.3.nu.7, 8. Sir *Bart. de Burghaſh.*
25 E.3.nu.16.
27 E.3.nu.2.
28 E.3.nu.1.
29 E.3.nu.8. Sir *William Sharſhull* Chiefe Iuſt.
45 E.3.nu.8. Sir *Robert Thorpe* Chiefe Iuſtice.
47 E.3.nu.2. Sir *Io. Knivet* Chiefe Iuſtice.
50 E.3 nu. 2. Sir *Io. Knivet* Chief Iuſtice. 51 E.3.nu.13. by Sir *Robert Aſhton* the Kings Chamberlain. [b] Parl. 36 E. 3. nu.1. *Simon Langham* B. of Ely Chancellor. [c] And ſo was it done ever after. 5 R.2.nu.2. The cauſes of Parliament were in ancient time ſhewed in the Chamber de peint, or St. Edwards Chamber. [d] Parlia. 27 E.3.nu.2.

The Election of the Speaker.

It is true, the Commons are to chuſe their Speaker: but ſeeing that after their choiſe the King may refuſe him, for avoiding of expence of time and conteſtation, the uſe is (as in the Conge de eſlier of a Biſhop) that the King doth name a diſcreet and learned man whom the Commons elect: but without their election no Speaker can be appointed for them, becauſe he is their mouth, and truſted by them, and ſo neceſſary, as the Houſe of Commons cannot ſit without him: and therefore a grievous ſickneſſe is a good cauſe to remove him, as in 1 H 4. John Chenye Speaker choſen and allowed, was for ſickneſſe, ſo as he could not ſerve, diſcharged, and Sir John Doreward choſen in his place: and ſo was William Sturton, after he was choſen and allowed Speaker, removed for grievous ſickneſſe, and Sir John Doreward choſen in his place. At the Parliament holden in 15 H.6. Sir John Tirrell Knight was choſen and allowed Speaker, and for grievous ſickneſſe removed, and William Beerly Eſq; choſen in his place, &c.

Sickneſſe cauſe to remove the Speaker. 1 H 4.nu.62,63. Rot.Parl.1 H.5. nu.9,10,11. Rot.Parl. 15 H.6. nu.10.& 27.

But ſickneſſe is no cauſe to remove any Knight, Citizen or Burgeſſe of the Houſe of Commons: So note a diverſity between the Speaker, and any other of the Houſe of Commons; and this diverſity being not obſerved begat an error by ſome opinion in 38 H.8. tit: Parliament Brook 7. for continuall experience is to the contrary.

Sickneſſe no cauſe to remove a Member of the Houſe of Commons. 38 H.8.Parl.Br.7.

The preſentment of the Speaker.

What the Speaker ſhall do when he is choſen.

When the Commons have choſen their Speaker, the perſon elected ſtanding in his place, diſabling himſelfe to undergoe ſo weighty a charge, as in his diſcretion he thinks fit, deſires them to proceed to a new choiſe: which being denied, and he ſet in the Chaire, then he prayeth them to give him leave, that he may diſable himſelfe to the King: after this they preſent him to the King in the Lords Houſe; where after he hath diſabled himſelfe to ſpeake before the King, and for the whole body of the Realme, and made humble ſuit to the King, leſt by his inſufficiency the buſineſſe of the Realme may be hindred, to be diſcharged, and a more ſufficient man to be choſen: if he be allowed by his Majeſty, then he maketh a Proteſtation conſiſting on three parts: Firſt, that the Commons in this Parliament may have free ſpeech, as of right and by cuſtome they have uſed, and all their ancient and juſt priviledges and liberties allowed to them. Secondly, that in any thing he ſhall deliver in the name of the Commons (if he ſhall commit any error) no fault may be arreted to the Commons, and that he may reſort againe to the Commons for declaration of their true intent, and that his error may be pardoned. The third is, that as often as neceſſity for his Majeſties ſervice, and the good of the Commonwealth ſhall require, he may by the direction of the Houſe of Commons have acceſſe to his Royall Perſon.

The King may allow of his excuſe, and diſallow him, as Sir *Iohn Popham* was. 28 H.6.nu.6. *The Proteſtation of the Speaker.*

This

This is in the Parliament Rols called a Protestation in respect of the first part, the nature whereof is to be an exclusion of a conclusion, and herein that the House of Commons be not concluded to speake onely of those things which the King or Lord Chancellor, &c. hath delivered to them to be the causes of the calling of this Court of Parliament, but in a Parliamentary course of all other arduous and urgent businesse, which principally consist in these five Branches, as it appeareth in the Writs of Summons to the Lords Spirituall and Temporall, viz.

Rot. Par. 1 R. 2. nu. 15. &c. Rot. Parl. 2 H. 4. nu. 8. Sir *Arnold Savage* Speaker. 5 H. 4. n. 8. 7 H. 4. nu. 11. Sir *John Tibtoft* Speaker. & ibid. nu. 30. 1 H. 5. nu. 7. 2 H. 5. nu. 10. And so in succeeding times called a Protestation.

The matters of Parliament.

1. Touching the King. 2. The state of the Kingdome of England. 3. The defence of the Kingdome. 4. * The state of the Church of England: and 5. The defence of the same Church. And this appeareth by expresse words in the Parliament Writ in these words: Pro quibusdam arduis urgentibus negotiis, nos, statum, & defensionem regni nostri Angliæ, & Ecclesiæ Anglicanæ concernentibus quoddam Parliamentum nostrum, &c. tenere ordinavimus, &c. And these words [the state and defence of the Kingdome] are large words, and include the rest. And though the state and defence of the Church of England be last named in the Writ, yet is it first in intention, as it appeareth by the title of every Parliament: As for example, * To the honour of God and of holy Church, and quietnesse of the people, &c.

Rot. Parl. 9 H. 4. An Act intituled *Indemnity des Seigniors & Commons* not printed. * See W. 1. Anno 3 E. 1. in the Preamble, the state of the Realme, & of holy Church. And the 2. part of the Institutes, W. 1. cap. 1. and in the Preamble. * 36 E. 3. 50 E. 3. &c.

Now for as much as divers lawes and statutes have been enacted and provided for these ends aforesaid, and that divers mischiefs in particular, and divers grievances in generall concerning the honour and safety of the King, the state and defence of the Kingdome and of the Church of England might be prevented, an excellent law was made Anno 36 E. 3. which being applied to the said Writs of Parliament doth in few and effectuall words set downe the true subject of a Parliament in these words. For the maintenance of the said Articles and Statutes, and redresse of divers mischiefs and grievances which daily happen, a Parliament shall be holden every year, as another time was ordained by a * Statute: Before the Conquest Parliaments were to be holden twice every year, Celeberrimus autem ex omni satrapia bis quotannis Conventus agitur. King E. 1. kept a Parliament once every two year for the most part, and now it is enacted, that a Parliament shall be holden once every yeare.

36 E. 3. cap. 10. Parliaments ought to be holden once in a yeare. * 4 E. 3. cap. 14. Int. leges Edgar cap. 5.

The Romans vanquished our Ancestors the ancient Britains, for that they assembled not, they consulted not in common with them, nor Common Councells, as Tacitus in vita Agricolæ saith. Nec aliud adversus validissimas gentes pro nobis utilius, quam quod in * commune non consulunt. Rarus ad propulsandum commune periculum conventus: Ita dum singuli pugnant, universi vincuntur. But to returne to the matters of Parliament.

Tacitus in vita Agricolæ, pag. 306. * Nota, Cõmune concilium. Conventus.

And it is enacted and declared by Authority of Parliament in Anno 4 H. 8. That all suits, accusements, condemnations, executions, fines, amerciaments, punishments, corrections, charges, and impositions at any time from thenceforth to be put, or had upon any member, either of that present Parliament, or at any Parliament at any time after that Act to be holden, for any Bill, * speaking, reasoning, or declaring of any matter or matters concerning the Parliament, to be communed, or treated of, be utterly void and of none effect. Which latter branch is generall. Now what matter or matters concerne the Parliament appear before. And this clause of the Act of 4 H. 8. is declaratory of the ancient law and custome of the Parliament.

4 H. 8. c. 8. * Nego; timida probitas, neque improba fortitudo Reipublicæ est utilis.

And this doth not onely appeare by the Writs directed to the Lords of Parliament, but by the Writs for election of the Commons. For example; The Writ to the Sheriffe of Norfolk for election of the Knights, Citizens, and Burgesses within that County is, Rex Vicecomiti Norff. Salutem. Quia nos de avisamento & assensu concilii nostri pro quibusdam arduis & urgentibus negotiis, nos, statum, & defensionem regni nostri Angliæ, & Ecclesiæ Anglicanæ concernentibus quoddam

The like Writ to all the other Counties, saving in Wales they have but one Knight and one Burgesse.

dam Parliamentum noſtrum apud, &c. teneri ordinaverimus, & ibidem cum Prælatis, magnatibus, & proceribus dicti regni noſtri colloquium habere & tractatum: ipſi Vicecom. Norff. præcipimus firmiter injungend, quòd facta proclamatione in proximo comitatu tuo poſt receptionem ejuſdem brevis, duos milites gladiis cinctos, &c. eligi faceret, &c. [a] ad faciendum & conſentiendum hiis quæ tunc ibidem de communi concilio noſtro [b] Angliæ (favente Deo) contingerent ordinari [b] ſuper negotiis antedictis, ita quòd pro defectu poteſtatis hujuſmodi, ſeu propter improvidam electionem Militum, Civium & Burgenſium prædict' dicta negotia noſtra infecta non remanerent quoviſmodo. **And this power extendeth equally to all Knights, Citizens and Burgeſſes of Parliament.**

[a] *Nota, ad faciendum & conſentiendum.* And every City two Chizens, and out of every Burgh two Burgeſſes.

[b] *Nota, ſuper negotiis antedictis.*

What the Speaker ſhall doe after his allowance.

After the Commons with their Speaker are come from the Lords houſe, and that the Speaker is ſet in the Chair, then he deſireth the Commons, that ſeeing they have choſen him for their mouth, that they would favourably aſſiſt him in their arduous and important affaires: and that he will doe them the beſt ſervice he can with all diligence and faithfull readineſſe, or to the like effect.

The Writs of Summons of Parliament, which are to be found in the cloſe Roll from time to time.

Seeing the Summons of Parliament (as hath been ſaid) **is by the Kings writs, which tend to the beginning of the Parliament, it ſhall be neceſſary to ſpeak ſomewhat of thoſe writs. And it is to be obſerved, that the ſubſtance of thoſe writs ought to continue in their originall eſſence without any alteration, or addition, unleſſe it be by Act of Parliament. For** * **if originall writs at the Common law can receive no alteration or addition but by Act of Parliament,** à multo fortiori, **the writs for the Summons of the higheſt Court of Parliament can receive no alteration, or addition, but by Act of Parliament. Where** [c] **the writs of Summons iſſued out of the Chancery, and were returnable in the Court of Parliament, the returne thereof could not be altered, and returnable into the Chancery, but by Act of Parliament. And becauſe the words of the writ for election of Knights, &c. were,** [d] **duos milites gladiis cinctos, &c. it required an Act of Parliament, that notable Eſquires might be eligible.**

*Bract. l. 5. f. 413. Britton 122. 227. Fleta li. 2. ca. 12. W. 2. ca. 25. 1. pt of the Inſt. Sect. 101. Epiſt. ad librum.

[c] 7 H. 4. ca. 15. Rot. Par. 5 R. 2. nu. 1, 2. & c. they be now returned into the Chancery, and kept in the office of the Clerk of the Crown there.

[d] 23 H. 6. ca. 15. Par. 6 H. 3. This was called *indoctum Parliamentum*, lack-learning Parliament. Rot. Parl. 46 E. 3. nu. 13. 5 R. 2. c. 4. 7 H. 4. ca. 15. See hereafter more of this matter, in this chapt. pa. and who be eligible, &c.

* Nota. W. 1. ca. 5. 3 E. 1.

Walſingham ſaith, that in Anno Domini 1404. which was anno 6 H. 4. in the writs of the ſummons of Parliament, there was added by the King a commandement in the writ, that no Lawyer ſhould be returned Knight or Burgeſſe, (but the Hiſtorian is deceived, for there is no ſuch clauſe in thoſe writs, but it was wrought by the Kings Letters by preterk of an Ordinance in the Lords Houſe, in 46 E. 3.) But at the next Parliament in 7 H. 4. at the grievous complaint of the Commons, being interrupted of their free election by thoſe letters (which were Letters of Juſtice and right) it is, amongſt other things, enacted, That elections * ſhould be freely, and indifferently made, notwithſtanding any prayer, or commandement to the contrary, i. ſine prece, by any prayer or gift, & ſine præcepto, without commandement of the King by writ, or otherwiſe, or of any other; which was a cloſe, and prudent ſalve, not onely for that ſore, but for all other in like caſe, and it is but an Act declaratory of the ancient law and cuſtoms of Parliament.

Petitions in Parliament.

On the firſt day of the Parliament, after the Commons be departed to chooſe their Speaker, then are certaine Juſtices Aſſiſtants and Civilians maſters of the Chancery Attendants, viz. foure Juſtices, and two Attendants appointed

appointed to be receivers of the Petitions of England, Ireland, Wales, and Scotland, and that those that will deliver their petitions, are to deliver them within six dayes following. At that time there are other Justices and Civilians attendants, viz. three Justices and two Attendants appointed to be receivers of Petitions for Gascoign and other * places beyond the Seas, and of the Isles, and that they deliver their Petitions within six dayes. &c.

Receivers of Petitions of England, Ireland, Wales, Scotland.

* Gascoign, Guyan, Poyters, Normandy, Anjou, &c.

Then are appointed of the Nobility Lords of Parliament and Bishops, viz. Six of the Nobility, and two Bishops, to be triers of the said Petitions for England, Ireland, Wales, and Scotland, they together, or foure of the Prelates and Lords aforesaid, calling to them the Kings learned Counsell, attendants in Parliament when need should be, and to sit in the Chamber of the Treasury. The like appointment of the Nobility and Bishops to be triers of the Petitions for Gascoign, and other places beyond the Seas, and of the Isles, and a place appointed for their sitting, calling to them the Kings learned Counsel when need should be. For petitions to be preferred into the Lords House in Parliament for the Countries and places aforesaid, this was the ancient constant law, and custome of the Parliament continued untill this day. Wherein these three things are to be observed; First, the extent of the Jurisdiction of the Parliament of England. Secondly, that for expediting of causes, there should be receivers of all Petitions, both of Judges of the Realme for their knowledge in the Lawes of the Realme, and of Civilians attendants, who might prepare and informe the triers, being Lords of Parliament, of the quality of those Petitions. Thirdly, that there should be of the Lords Spirituall and Temporall triers of those Petitions, to try out whether they were reasonable, and good and necessary to be offered and propounded to the Lords.

Triers of Petitions.

Of Petitions in Parliament some be of Right, some of Grace, and some mixt of both: some preferred by the Lords Spirituall, some by the Lords Temporall, some by the Commons, some by the Lords and Commons. Extra Parliamentum nulla petitio est grata, licet necessaria; In Parliamento nulla petitio est ingrata, si necessaria. [a] All Petitions ought to containe convenient certainty and particularity, so as a direct answer may be given to them.

[b] Petitions being timely preferred (though very many) have beene answered by the law and custome of Parliament before the end of the Parliament. This appeareth by the ancient Treatise, De modo tenendi Parliamentum, &c. in these words faithfully translated in a faire and ancient Manuscript, for Bils and Petitions. The Parliament ought not to be ended while any Petition dependeth undiscussed, or at the least, to which a determinate answer is not made.

[a] Ro. Par. 18 E. 1. fo. 3. & 16. 50 E. 3. nu. 125. 66. 81. 17 E. 3. nu. 5, 6. 36 E. 3. nu. 35. 43 E. 3. nu. 19. 45 E. 3. nu. 33. 47 E. 3. nu. 16. 1 R. 2. nu. 132. &c.

[b] Rot. Par. 17 E. 3 nu. 60. 25 E. 3. nu. 60. 50 E. 3. 212. 1 R. 2. 134. &c. 2 R. 2. nu. 38. 1 H. 4. 132. 2 H. 4. 3. 25. 3 H. 4. 113. 23 E. 3. nu. 42. 25 E. 3. nu. 12. 36 E. 3. nu. 31. 50 E. 3. nu. 52.

And in the Parliament Rols, there is a Title towards the end of the Parliament, The Petition of the Commons, &c. with their answer entred and recorded in the Roll of Parliament. [c] And one of the principall ends of calling of Parliaments is for the redresse of the mischiefs and grievances that daily happen. * Innovations and Novelties (sometimes tearmed in Rols of Parliament Novelries) in Parliamentary proceedings are most dangerous, and to be refused. [d] And sometime the King doth answer the Petition of the Commons by the assent of the Prelats, Counts, Barons, and Commons themselves: such unity hath been for the common good in Parliaments in former times.

[c] 36 E. 3. ca. 10. 18 E. 3. ca. 1. 4. 50 E. 3. nu. 17. Lions case. Rot. Par. 1 H. 5. nu. 17. 13 H. 4. nu. 9. 11 H. 4. ca. 9.

* Innovations & Novelties.

[d] 36 E. 3. Rot. 19. &c.

Appointment of Committees of Grievances, &c.

The Commons being the generall Inquisitors of the Realme, have principall care in the beginning of the Parliament to appoint dayes of Committees, viz. of grievances (both in the [e] Church and Commonwealth) of

[e] Bracton. Gravius est æternam quam temporalem lædere majestatem. And it appeareth by the statute of 36 E. 3. cap. 10. That it is one of the principall ends of the Parliament, to redresse grievances. And the words of the Writ of Parliament be *De arduis & urgentibus negotiis, statum & defensionem Ecclesiæ Angliçanæ concernentibus.*

Courts

Courts of Juſtice, of priviledges, and of advancement of trade. Theſe Committees when they meet, they elect one of them to ſit in the Chaire in likeneſſe of the Speaker: the Committee may examine and vote the queſtions handled by them, and by one, whom they appoint, report their reſolution to the Houſe, and the Houſe, ſitting the Speaker, to determine the ſame by queſtion.

Abſents, Proxies.

21 E. 4. 56. The ancient Record, *De modo tenend. Parl. &c. verſ. finem, optime.*

Any Lord of the Parliament by licenſe of the King upon juſt cauſe to be abſent, may make a Proxy: and in the bundle of Proxies Anno 5 H. 5. it appeareth, that in thoſe dayes a Spirituall Lord of Parliament might have made his Proxie to the Procurators of the Clergy, or to any other Clerk, but at this day he cannot make it but to a Lord of Parliament: but a Knight, Citizen, or Burgeſſe of the Houſe of Commons cannot by any meanes make any Proxy, becauſe he is elected and truſted by multitudes of people.

Of the ancient Treatiſe called Modus tenendi Parliamentum.

See the ſecond part of the Inſt. Mag. Carta ca. 2. pag. 7, 8. See the firſt part of the Inſtitutes Sect. 164. fo. 110. See the 2. part Inſt. pa. 8 the Charter of King H. 1. at his Coronation having relation to *Modus tenendi Parl.* See alſo the Charter of King John anno 17 Math. Par. 246. *per antiquum relevium*, viz. *hæres comitis pro comite integro* 100 l. *hæres Baronis pro Baronia integra* 100 *marc. & hæres militis de feodo militis integro.* 5 l. See Mag. Cart. cap. 2.

Now for Antiquity and Authority of the ancient Treatiſe called Modus tenendi Parliamentum, &c. whereof we make often uſe in this part of the Inſtitutes; certaine it is, that this Modus was rehearſed and declared before the Conqueror at the time of his Conqueſt, and by him approved for England, and accordingly the Conqueror according to Modus held a Parliament for England, as it appeareth in 21 E. 3. fo. 60.

After King H. 2. had conquered Ireland, he ſitted and tranſcribed this Modus into Ireland in a parchment Roll, for the holding of Parliaments there, which no doubt H. 2. did by advice of his Judges, being a matter of ſo great weight and legall. This Modus in the parchment Roll tranſcribed as aforeſaid by H. 2. remained in Ireland, and in anno 6 H. 4. was in the cuſtody of Sir Chriſtopher Preſton Knight, a man of great wiſedome and learning, which Roll King H. 4. in the ſame yeare, De aſſenſu Johannis Talbot Chivalier his Lieutenant there, and of his Councell of Ireland, exemplified for the better holding of the Parliaments there; and in the exemplification it expreſſly appeareth that H. 2. did tranſcribe this Modus, as is aforeſaid.

This Modus was ſeene by the makers of the Statute of Magna Carta, Anno 9 H. 3. cap. 2. concerning the reducing of the *ancient reliefes of entire Earldomes, Baronies, and Knights fees according to ſuch proportions as is contained in the Modus, which they could not have done ſo punctually, if they had not ſeene the ſame, whereof you may read more at large in the Firſt part of the Inſtitutes, Sect. 103, fo. 76. Verbo Relief. And ſome part of this Modus is cited in the Parliament Roll, Anno 11 R. 2. and other Records of Parliament, and upon diligent ſearch we can find nothing againſt it. But many very ancient copies you may find of this Modus, one whereof we have ſeene in the reigne of H. 2. which containeth the manner, forme and uſage of Gilbert de Scrogel Marſhall of England, in what manner he occupied and uſed the ſaid roome and office in all his time, and how he was admitted, &c. at the Coronation of H. 2. and of his Knight Marſhall, and other inferiour officers, &c. and adjoyned thereunto, and of the ſame hand is this Modus, as fit for him to know.

* It is juſtly called *antiquum relevium*, becauſe it is according to the proportion of this ancient Modus.

But leſt it might be ſaid to me, as it was once ſaid to an Orator, who having ſpoken much in commendation of Hercules: It was demanded of one that ſtood by, Quis vituperavit? Ad quod non fuit reſponſum. But now let us returne to Proxies.

At the Parliament holden An. 1 Eliz.

A Lord of Parliament by licenſe obtained of the Queene to be abſent, made a Proxie to three Lords of Parliament. Conjunctim & diviſim dans eis poteſtatem tractandi, tractatibuſque auxilium & conſilium impendendi, atque ſtatutis & ordinationibus, quæ inacta' contigerint, conſentiendi, ita quod non ſit melior conditio occupantis. And one of the Procurators gave conſent to a Bill, and the

the two others ſaid, not content. And firſt it was by order of the Lords debated amongſt the Judges and Civilians attendants, and conceived by them that this was no voice, and the opinion was affirmed by all the Lords of Parliament ſeriatim. Another queſtion was moved at that time, that if a Lord of Parliament make a Proxy, and after come into the Lords houſe of Parliament, and ſit there without arguing, conſenting or ſpeaking any thing: and it was conceived by the Judges and Civilians, that his ſitting there without ſaying any thing was a revocation in law of his Proxy; à Fortiori, if he moved, or ſpake to any matter there propounded; and their opinion was reſolved by the Lords ſeriatim. And theſe were the proxies of the Biſhop of Bathe, the Lord Howard Chamberlain, and of the Lord Windeſor.

King John in the 13 year of his reign being in extream fear of both the Pope and the French King, and eſpecially of his own ſubjects (and what is feare, ſaith Solomon, but a betraying of the ſuccours that reaſon offereth?) ſent Ambaſſadours to Admiralius Murmelinus great Emperour of Turky Sir Thomas Herrington and Sir Ralph Nicholſon Knights, and Sir Robert of London Clerk, nuntios ſuos ſecretiſſimos, to offer to be of his Religion, and to make his kingdome Tributary to him, and he and his ſubjects to be his vaſſals, and to hold his kingdome of him. But that Infidell great Prince, as a thing unworthy of a King, to deny his religion, and betray his kingdome, utterly refuſed to accept. King John in the 14 year (the nert year) of his reign by his Charter 15 May, by the threats and perſwaſion of the Popes Commiſſary Pandulphus ſurrendred his kingdomes of England and Ireland to Pope Innocent the Third, cum communi conſilio Baronum, (as he inſerted therein) and that thence forward he would hold his Crown as feodary to the Pope, paying for both his kingdomes 1000. marks. Whereupon doing homage and fealty to the Pope by the hand of Pandulphus, and taking off the Crown from his head ſurrendred it to the Pope by Pandulphus, at whoſe feet he laid alſo the royall Enſignes, his Scepter, Sword and Ring; all which was afterward accepted, approved and ratified by the Pope, by his Bull which was called Bulla aurea. Lib. Sap. 17. 12. Mar. Par. pa. 233.

Gregorius Papa petiit à Rege E. 1. per literas annuum cenſum 1000 merc. Rex reſpondet ſe ſine prælatis & proceribus regni non poſſe reſpondere, & quòd Jurejurando in Coronatione ſua fuit aſtrictus, quòd jura regni ſui ſervaret illibata, nec aliquid quod Diadema tangat regni ejuſdem abſque ipſorum requiſit conſilio faceret. Rot. Cl. An. 7 E 1 m. 9. in Schedula.

In anno 40 E. 3. the Pope by his Ambaſſador demanded of the King Homage for the kingdome of England and land of Ireland, and the arrerages of 1000. marks by the year, granted by King John to Pope Innocent the third and his ſucceſſors, and threatned that if it were not paid, the Pope was reſolved to proceed againſt the King. Whereupon the King in the ſame year calleth his Court of Parliament, and in the beginning of that Parliament (ſaith the Record) Fuit monſtre a les Prelates, Dukes, Countes, Barons, les Chivaliers des Counties, Citizens & Burgeſſes en le preſence le Roy per le Chancelor, coment ils avoient entendue les cauſes del ſummons del Parliament en generall, mes la volunte le Roy fuiſt que les cauſes ſeuſſent monſtres a eux en eſpeciall: lour diſoit coment le Roy avoit entendue que le Pape per force dun fait quel il dit que le Roy Johan feſoit au Pape de luy faire homage pur le realme D'engleterre & la terre D'irland, & que per cauſe du dit homage qil luy deveroit paier cheſcun an perpetuelment mille marcs, eſt en volunte de faire proces devers le Roy & ſon roialm pur ledit ſervice & cens recoverir; de qoi le Roi pria as dits Prelats, Dukes, Countes & Barons lour avys & bon conſeil, & ce qil enferroit, en caſe que le Pape vorroit proceder devers luy, ou ſon dit roialme per celle cauſe: & les Prelats requeroient au roy quils ſe purroient per eux ſoul aviſer & reſpondre lendemain, queux Prelatz ledit lendemain adeprimes per eux meſmes, & puis les autres Dukes, Countes, Barons & Gentz reſpondirent & diſoient, que le dit Roy Johan ne nul autre purra mettre lui, ne ſon roialme, ne ſon people Rot. Par. 40 E. 3. nu 8. An Act never yet printed. I have thought good to tranſcribe it in proprio Idiomate.

No King can put himself nor his Realm, nor his people, in such subjection without assent of the Lords and Commons in Parliament, and therefore if K. Iohn had done it by the Common Councell of his Barons, as his Charter purported, yet it bound not, for that it was not done in Parliament by the King, the Lords and Commons: and albeit it might (as here it appeareth) it cannot be done without Authority of Parliament) yet it is *Contra legem & consuetudinem Parliamenti*, to doe such a thing, as by the next Record in 42 E. 3. appeareth.

* Ro. Par. 42 E. 3. nu. 7. *Lex & consuetudo Parliamenti.*

en tiele subjection sanz assent & accorde deux: & les communes sur ce demandez & aviseez responderent en mesme le manere; sur qui feust ordeine, & assentu per commune assent en manere quensuyt. En ce present Parlement tenuz a Westm Lundy proschein apres la invention de la Seinte Croice lan du reign le Roy Edward quarantisme, tant sur lestat de Seinte Eglise, come des droits de son roialm & de la Corone maintenir, entre autres choses estoient monstrez coment ad este parlee, & dit que le Pape per force dun fait quele il dit que le Roi Johan, jadis Roy Dengleterre fesoit au Pape au perpetuite de luy faire homage pur le Roialme Dengleterre & la terre de Irland, & per cause du dite homage de luy rendre un Annuel rent: ad este en volunte de faire proceese devers le Roi pur les ditz services & ceus recoverir; la quele chose monstree as Prelats, Ducs, Countes, Barons, & la commun pur ent avoir lour avys & bon conseil, & demandee de eux ce qu le Roi enferra en case que le Pape vorrolt proceder ou rien attempter devers loi ou son roialme per celle cause? Queux Prelats, Ducs, Countes, Barons & communes en sur ce plein deliberation responderont & disoient dune accorde, que le dit Roy Johan ne nul autre purra mettre luy ne son roialme ne son people en tiel subjection sanz assent de eux, & come piert per plusours evidences, que si ce feust fait, ce feust fait sanz leur assent, & encontre son serement en sa Coronation: Et outre ce le Ducs, Countes, Barons, Gents & Communes accorderent & granterent que en case que le Pape se afforceroit ou rien attempteroit per proces, ou en auter manere de fait de constreindre le Roi ou ses subjects de per fair ce quest dit q'il voet clamer celle partie qils resistront & contrestterront ove toute leur puissance.

This Noble and prudent King tooke the fairest and surest way to give satisfaction, whereof the Pope being certified, the matter ever since hath rested in quiet.

*** It is declared by the Lords and Commons in full Parliament, upon demand made of them on the behalfe of the King, that they could not assent to any thing in Parliament, that tended to the diversion of the King and his Crowne, wherunto they were sworn.** See hereafter in the case of Ireland.

Lex & consuetudo Parliamenti.

7 E. 2. *Stat. De defensione portand. arma.*
2 E. 3. ca. 3.
Rot. Par. 6 E. 3. nu. 1, 13 E. 3. nu. 2, 14 E. 3. nu. 2, 15 E. 3. nu. 2, 17 E. 3. nu. 3, 18 E. 3. nu. 1, 20 E. 3. nu. 1, 25 E. 3. stat. 1. nu. 58. 25 E. 3. stat. 2. nu. 5. &c.
Privy coat or Armour.
Games or plays.
Rot. Par. Anno 13 E. 3. nu. 5. & 8.
* See hereafter pa.

By the antient law, and custome of the Parliament a proclamation ought to be made in Westminster in the beginning of the Parliament, that no man upon paine to lose all that he hath, should during the Parliament in London, Westminster, or the Suburbs, &c. weare any privy coat of plate, or goe armed, or that games or other playes of men, women, or children, or any other pastimes or strange shews should be there used during the Parliament: and the reason hereof was, that the High Court of Parliament should not thereby be disturbed, nor the members thereof (which are to attend the arduous and urgent businesse of the Church and Common-wealth) should not be withdrawn.

*** It is also the law, and custome of the Parliament, that when any new device is moved on the Kings behalfe, in Parliament for his aid, or the like, the Commons may answer, that they tender the Kings estate, and are ready to aid the same, only in this new device they dare not agree without conference with their Countries; whereby it appeareth, that such conference is warrantable by the law and custome of Parliament.**

And it is to be observed, though one be chosen for one particular County, or Borough, yet when he is returned, and sit in Parliament, he serveth for the whole Realme, for the end of his comming thither, as in the writ of his election appeareth, is generall, ad faciendum & consentiendum his quæ tunc & ibidem de communi consilio dicti regni nostri (favente deo) contigerint ordinari super negotiis prædictis. i. pro quibusdam arduis & urgentibus negotiis nos, statum, & defensionem regni nostri Angliæ & Ecclesiæ Anglicanæ concernentibus, **which are rehearsed before in the writ.**

Lex & consuetudo Parliamenti.

And as every Court of Justice hath lawes and customes for its direction, some by

by the Common law, ſome by the Civill and Canon law, ſome by peculiar lawes and cuſtomes, &c. So the High Court of Parliament Suis propriis legibus & conſuetudinibus ſubſiſtit. It is * lex & conſuetudo Parliamenti, that all weighty matters in any Parliament moved concerning the Peers of the Realm, or Commons in Parliament aſſembled, ought to be determined, adjudged and diſcuſſed by the courſe of the Parliament, and not by the Civill law, nor yet by the Common lawes of this Realm uſed in more inferiour Courts; which was ſo declared to be ſecundum legem & conſuetudinem Parliamenti, concerning the Peers of the Realm, by the King and all the Lords Spirituall and Temporall; and the like pari ratione is for the Commons for any thing moved or done in the Houſe of Commons: and the rather, for that by another law and cuſtome of Parliament, the King cannot take notice of any thing ſaid or done in the Houſe of Commons, but by the report of the Houſe of Commons: and every member of the Parliament hath a judiciall place, and can be no witneſſe. And this is the reaſon that Judges ought not to give any opinion of a matter of Parliament, becauſe it is not to be decided by the common lawes, but ſecundum legem & conſuetudinem Parliamenti: and ſo the Judges in divers Parliaments have confeſſed. And ſome hold, that every offence committed in any Court puniſhable by that Court, muſt be puniſhed (proceeding criminally) in the ſame Court, or in ſome higher, and not in any inferiour Court, and the Court of Parliament hath no higher.

Iſta lex ab omnibus eſt quærenda, à multis ignorata, à paucis cognita.

Fleta lib. 2. cap. 2.

* Rot. Par. 11 R. 2. nu. 7.

See the firſt part of the Inſtitutes. Sect. 3. Verb. *Es la ley.*

Rot. Parl. 2 H. 4. nu. 11.

Rot. Parl 3 H. 6. In le Countee de Marſhalls caſe.

Rot. Par. 27 H. 6. nu. 18. the Earle of Arundels caſe.

Rot. Parl. 31 H. 6. nu. 26, 27, 28. Baron Thorps caſe.

Upon his petition exhibited to the King, wherein the queſtion was, whether the power which he had raiſed was High Treaſon, &c. which petition (ſaith the King) let be delivered to the Juſtices by them to be conſidered. Whereupon the Lords made proteſtation, that the order thereof belonged to them, which was to them allowed, and they reſolved it to be no treaſon.

5 H. 4. nu. 22. The Earl of Northumberlands caſe.

Vid. Rot. Parl. 9 H. 4. *Indemnity des Seigniors & Commons.*

And becauſe we have a caſe in 3 E. 3. 19. concerning the law and cuſtome of Parliament, we have thought good to ſet down the Record of that caſe de verbo in verbum, and then to examine the report of the ſaid caſe, and the opinion there delivered, wherein we ſhall deſire the learned to conſider well the ſtatute of 5 R. 2. ſtat. 2. cap. 4. and thereupon to conſider what (as that ſtatute ſpeaketh) hath been done of old times, &c. And how that Act ſaith done, and not ſaid.

Paſch. 3 E. 3. coram Rege Rot. 9. in Dorſ. Southt. Note, that this was by Writ Originall.

Iohannes Epiſcopus Winton in miſericordia pro pluribus defaltis. Idē Iohannes Epiſcopus attachiat' fuit ad reſpond' Domino Regi, de eo quare cum in Parliamento Regis apud novā Sarū nuper ten' per ipſum Dominū Regem inhibitum fuiſſet, ne quis ad dictum Parliamentum ſummonitus ab eodem recederet ſine licenc' Regis: Idem Epiſcopus durante Parliamento prædict. ab eodem ſine licentia Regis receſſit in Regis contemptum manifeſtum, & contra inhibitionem Regis ſupradictam. Et unde idem Dominus Rex per Adam de Fincham, qui ſequitur pro eo, dicit, quod prædictus Iohannes Epiſcopus fecit ei tranſgreſſ. & contemptum prædict. &c. in contempt. Regis mille librarum. Et hoc offert verificare pro Domino Rege, &c.

The Declaration.

*Et prædictus Epiſcopus in propria perſona ſua venit, & defendit omnem contemptum & tranſgreſſ. & quicquid, &c. & dicit, quod ipſe eſt unus de paribus regni, & Prælatus ſacroſ. Eccleſiæ, & eis inde eſt venire ad Parliamentum Domini Regis per ſummonitionē & pro voluntate ipſius Domini Regis cum ſibi placuerit, * Et dicit, quod ſi quis*

The Plea of the Biſhop to the juriſdiction of the Court.

* Nota hoc.

eorum deliquerit erga Dominum Regem in Parliamento aliquo, in Parliamento debet corrigi & emendari, & non alibi in minor' Cur. quam in Parliamento: per quod non intendit, quod Dominus Rex velit in cur. hic de hujuſmodi tranſgr. & contempt. factis in Parliamento reſponderi, &c. Et ſuper hoc datus eſt eis dies coram Rege à die Sanctæ Trin. in quindecem dies ubicunq; &c. ſalvis rationibus. Ad quem diem præd. Epiſcopus venit in propria perſona ſua, & datus eſt ei dies coram domino Rege à die Sancti Mich. in 15 dies ubicunq; &c. in eodem ſtatu quo nunc &c. ſalvis rationibus ſuis, &c. Ad quem diem venit prædict. Adam qui ſequitur, &c. Et ſimiliter prædictus Epiſcopus in propria perſona ſua. Et prædictus Adam pro prædicto Domino Rege dicit, quod cum placeat ei Parliamentum ſuum tenere pro utilitate regni ſui de regali poteſtate ſua facit illud ſummoneri ubi & quando, &c. pro voluntate ſua, & etiam facit prohiberi exiſtentibus tunc ad Parliamentum, ne quis eorum abinde recedat contra prohibitionem ſuam, &c. abſq; licentia, &c. Et ſi quis eorum abinde recedat contra prohibitionem, &c. in contempt. regis, &c. bene liceat ipſi Domino Regi ſumere ſectam erga hujuſmodi delinquentes in qua curia placeat ſibi, &c. Et ex quo Dominus Rex pro voluntate ſua Parliamenta ſua tenet, &c. petit judicium pro ipſo domino rege, ſi idem Dominus Rex duci debeat, ſeu compelli ad proſequend' in hac parte alibi contra voluntatem ſuam, &c.

This is the allegation of the Kings Attorny.

Et prædictus Epiſcopus dicit ut prius, quod cum aliquis deliquerit in Parliamento, ibidem debet corrigi & emendari, &c. & licet aliquis ſummonitus eſſet veniendi ad Parliamentum, et non veniſſet ibidem, debet puniri, per quod non intendit, quod dominus rex velit alibi reſponderi quam in Parliamento, &c. Et ſuper hoc datus eſt eis dies uſq; in Crā. Animarum ubicunque, &c. in eodem ſtatu quo nunc, &c. Ad quem diem venit tam prædict. Adam, qui ſequitur pro domino rege, quam prædict. Epiſcopus in propria perſona ſua. Et datus eſt eis dies coram domino rege in Octab. Sancti Hilarii ubicunq, &c. ſalvis rationibus ſuis, &c. Ad quem diem prædict. Epiſcopus venit, & datus eſt ei dies ulterius coram domino rege in Octab. Pur. beatæ Mariæ ubicunq, &c. Ad quem diem venit tam prædictus Epiſcopus, quam Iohannes de Lincolн qui ſequitur pro domino rege, et datus eſt eis dies ulterius coram domino rege à die Paſchæ in quinque ſeptimanas ubicunq. &c. Salvis rationibus, &c. Ad quem diem venit tam præd. Epiſcopus in propria perſona ſua, quam prædict. Iohannes de Lincolн qui ſequitur pro dicto domino rege, &c. Et datus eſt eis dies ulterius a die Sancti Michaelis in 15 dies ubicunq; &c. ſalvis ſibi rationibus ſuis hinc in dicend' &c.

The B. maintains his former plea to the juriſdiction.

Ana

And this is all that is in the Record, whereby it appeareth that the plea of the Bishop to the Jurisdiction of the Court after divers dayes given did stand, and was never over ruled agreeably to the said resolutions in former times, that Judges were not to determine matters concerning the Parliament, as is aforesaid. Touching the report of the said case, thus far forth it agreeth, that this contempt cannot be punished in any other Court then in the Kings Bench: so as the question is only for that Court. It appeareth that the reporter never saw the said Record, only tooke it by the eare of that which was spoken in Court (a dangerous kind of reporting, and subject to many mistakings, for seldome or never the right case is put) as in this case it fell out. For first, where the Record saith, that the Parliament was holden at Sarum, the report is of a Parliament holden at Salop. 2. The Report saith, that John B. of Winchester was arraigned, which implieth that he was indicted, &c. where he was sued by originall Writ. 3. The Inhibition made by the King alledged in the Record, is not in the Report. 4. Concerning the sudden opinion of Scrope in this Report: By his opinion the Parliament it selfe could not have punished this contempt; for he saith, Ceux q̄ sont Judges de Parliament, sont judges de lour Pier, mes le Roy nad my pier in son terre demesn, pur q̄ il ne poet p̄ eux estre judge, donques ailors que cy ne poet estre judge, whereas without question the Parliament might have punished this contempt: and concludeth with a rule at the Common Law, that the King may sue in what Court it pleaseth him. But matters of Parliament (as hath been often said) are not to be ruled by the Common law: and it seemeth that the rest of the Judges were against Scrope, for the plea was never over-ruled, as by the Record it appeareth.

Vide per Indictamenta Termino Paschæ 1 & 2 Ph. & Mar. coram Rege Rot. 48. Informations preferred by the Attorney Generall against 39 of the House of Commons for departing without license contrary to the Kings Inhibition in the beginning of the Parliament; whereof 6 being timorous Burgesses ad redimendam vexationem submitted themselves to their Fines, but whether they paid any, or very small, we have not yet found. And Edmond Plowden the learned Lawyer pleaded, that he remained continually from the beginning to the end of the Parliament, and tooke a Travers full of pregnancy: and after his plea was fine die per demise le Roign.

Mich. 3 & 4 Ph. & Mar. Rot. 36. inter Plac. Regis & Reginæ.

If offences done in Parliament might have been punished elsewhere, it shall be intended that at some time it would have been put in use. Vid. the first part of the Institutes. Sect. 108.

Note the said Informations Anno 1 & 2 Ph. & Mar. against 39 of the House of Commons follow in these words. *Pasch. 1 & 2 Ph. & Mar. Regis & Reginæ.* Midd. *ff. Memorand' quod Edwardus Griffyn ar' Attornat' dom' regis & reginæ generalis, qui pro eisdem domino rege & domina regina sequitur, venit hic in Cur' dictorū dnorum regis & reginæ coram ipsis rege & regina apud Westm' die Sabbathi proxim' post quind' Pasch. isto eodem Termino, & dat Cur' hic intelligi & informari. Quòd cum ad parliamentū dominorū regis & reginæ nunc tent' apud Westm' Annis regnorum suorum primo & secundo inhibitum fuit per ipsos dominum regem & dominam reginam in eodem parliamento, quod nullus ad idem parliament' summonitus, & ibidem interessens, ab eodem parliamento absque speciali licentia dictorū dominorū regis & reginæ, & Cur' parliament' prædict' recederet, seu seipsum aliquo modo absentaret. Quidam tamen Thomas Denton de in com' Oxon' ar' Henricus Cary de in com' gent' Richardus Warde de in com' ar' Edmund. Plowden de*

Edw. Griffin.

Inhibitum fuit.

de Tybmerſhe in com. Berks armiger, Henricus Chiverton de in com. ar. Robertus Browne de in com. Iohannes Courke de in com. Iohanes Pethebrige de in com. Iohannes Melhewes de in com. Courtney de in com. Radulphus Michel de in com. Thomas Mathew de in com. Richardus Braſey de in com. Thomas Maſſye de in com. armig'. Petrus Frechwell de in com. miles. Henricus Vernon de Sydbery in com. Derby armig. Willielmus Moore de villa Derb. in com. Derb. gen. Willielmus Banibrigge de in com. Ioh. Eveleigh de in com. gen. Nich. Adamps de Dartmouth, aliàs Clifton Harnys in com. Devon gen. Richardus Phelipps de in com. ar. Anthonius Dylvington de in com. Andreas Hoorde de in com. Chriſtopherus Hoell de in com. Dorſ. gen. Iohannes Mannocke de in com. gen. Thomas Phelipps de in com. Iohannes Hamond de in com. Iohannes Phelipps de in com. Willielmus Randall junior, de in com. Iohannes Moyne de in com. Hugo Smyth de in com. gen. Rogerus Gerrard de in com. gen. Radulphus Scroope de in com. gen. Thomas Moore de Hambled. in com. Buck. gen. Willielmus Reade de in com. ar. Henricus Mannock de in com. ar. Ioh. Maynard de Villa Sancti Albani, in com. Hertf. ar. Nich. Debdenvle in com. gen. & Philippus Tirwhyt de in com. ar. qui ſummoniti fuerunt ad dictum Parliamentum, & in eodem Parliamento comparuerunt, ac ibidem interfuerunt

Mandatum & Inhibitionem.

mandat' & inhibitionem dominorum regis & reginæ ſupradict' parvi pendentes, ac ſtatum reipublicæ hujus regni Angliæ minime curantes aut ponderantes poſtea ſcil. 12 die Ianuarii Annis regnorũ dictorũ dominorũ regis & reginæ nunc primo et ſecundo ſupradictis, et durante parliamento prædicto ab eodem parliamento ſine licentia dictorum dominorum regis & reginæ & cur' ſuæ prædict' contemptuoſe receſſerunt in ipſorum dominorum regis & reginæ ac mandat' & inhibitionis ſuorum prædict' curiæq; prædict. contempt' manifeſtum, ac in magnum reipublicæ ſtatum hujus regni Angliæ detriment', nec non in perniciоſum exemplum omnium aliorum, &c. Vnde idem Atturnatus dominorum regis & reginæ petit adviſamentum cur' in præmiſ. & debit' legis proceſſ. verſ. eoſdem Thomam Denton, Henricum Cary, Richardum Warde, Edm. Plowden, Henricum Chiverton, Robertum Browne, Ioh. Courk, Ioh. Pethybridge, Ioh. Melhewes, Ioh. Courtney, Radulph. Michell, Thomam Mathewe, Richardum Braſey, Thomam Maſſye, Petrum Frechwell, Henricum Vernon, Will. Moore, Will. Banibrigge, Ioh. Eveleigh, Nich. Adamps, Richardum Phelipps, Anthonium Dilvington, Andream Hoorde, Chriſtopherum Hoell, Iohannem

Mannock

Mannock, Thomam Phelipps, Iohan. Hamond, Ioh. Philipps, Williel-mum Rundall, Ioh. Moyne, Hugonem Smith, Rogerum Gerrard, Radulphum Scroope, Tho. Moore, Will. Read, Henricum Mannock, Iohan. Maynard, Nicholaum Debden, & Phil. Tyrwhytt fieri ad respondend. domino regi, & dominæ reginæ de contempt' prædict. &c.

Et modo scil. die Veneris prox' post Craſt' animarum iſto eodem Termino coram domin' rege & dña regina apud Weſt' ven' prædict' Edm. Plowden per Andream Tuſſer Attornatũ ſuum: & habit' audit' informationis prædict' & dic', quod ipſe non intendit quod dominus rex & domina regina nunc ipſum Edmun' pro præmiſſis vel aliquo præmiſſorũ impetere ſeu occaſionare velint aut debent: Quia dicit quod ipſe ad dict' Parliament' informatione prædict' ſpecificat' interfuit & præſens fuit, ac in eodem Parliamento continue remanſit, viz. à principio ipſius Parliamenti uſque ad finem ejuſdem, abſque hoc quod ipſe idem Edmund. Plowden dicto 12 die Ianuarii, An. primo & ſecundo ſupradict' durant' Parliament' prædict' ab eode Parliament' ſine licentia dictorum dominorum regis & reginæ, & cur' ſuæ prædict' contemptuoſe receſſit in ipſorum dominorum regis & reginæ ac mandat' & inhibitionis ſuorũ prædict' curiæq; prad' contempt' manifeſt', ac in magnum reipublicæ ſtat' hujus regni Angliæ detriment', nec non in perniciosum exemplum omnium aliorũ modo & forma prout per informac' prædict' verſ. eum ſupponitur. Et hoc paratus eſt verificare prout cur. &c. unde pet' judicium: & quod ipſe de præmiſſ. per eum' hic dimittatur, &c.

Mic. 3 & 4 Ph. & Mar. Ro. 36. inter plac. regis & reginæ.

Nota, the pregnancy of this travers.

Sine die per demiſſe le Roy.

Midd. Ve. fac' Thoman Conſtable de Grimsbye in com. Lincoln. Ar. Hen. Leigh, de in com. Franciſ. Farnham de Querne in com. Leic. ar. Li. lo. Mic. 2 & 3 Ph. Regis & Mar. Reginæ. *Ioh. Holcroft. Sen. de in com. milit. Will. Brombley de in com. ar. Tho. Somerſet de in com. ar. Georg. Ferrers de Markyat' in com. Hertf. gen. Nich. Powtrell de Excincten in com' Nott' ar.* F. Hil. 3 & 4 Ph. & Mar. *Tho. Moyle de in com' Kanc' milit. Tho. Waters de in com. ar. Will. Tylcock de civit' Oxon' gen.* Li. lo. Hil. 2 & 3 Ph. & Mar. *Tho. Balkden de Wolvingleigh in com. Sur milit.* Li. lo. Mic. 2 & 3 Ph. & Mar. *Math. Cradock de villa Staff. gen.* Li. lo. Hil. 2 & 3 Ph. & Mar. *Georgium Lye de villa Salop. gen.* Ceſſ. proceſſ. per mandat' Attornat' dominorum regis & reginæ, quia ulterius proſequi non vult verſ. ipſum Geo. Lye. *Ioh. Hoord de Bridgenorth in com. Salop. gen.* F. Mic. 5 & 6 Ph. & Mar. *Ioh. Aſop de villa de Ludlowe in com. Salop. gen. Wil. Laurence de Civ. Winton gen.* Li. lo. Mich. 2 & 3 Ph. & Mar. *Robert. Hudſon de Civ. Winton. gen.* Li. lo. ut antea. *Edm. Rouſe de Donwich in com' Suff. mil. Rob. Coppinge de Donwich in com' Suff. ar. Ioh. Harman de Hoſpitio dom. regis & dom. reginæ gen. Will. Crowch de Wellowe in com' Somerſ. ar. Tho. Lewes de villa de Wels in*

Per de annis 1 & 2 Ph. & Mar. Rot. 48.

com'

com' Somerſ. gen. Li. lo. Hil. 2 & 3 Ph. & Mar. *Wil. Godwyn de Wells* præd' in com' Somerſ. gen. F. Mich. 3 & 4 Ph. & Mar. *Ioh. Aſhburnham de Aſhburnham in com' Suſſ. ar.* Li. lo. Mic 2 & 3 Ph & Mar. *Walt. Reyncum de Civ' Ciceſt' in com' Suſſ. gen.* Li. lo. Tr. 2 & 3 Ph. & Mar. *Wil. Moodyere de Slindon in com' Suſſ gen.* F. Tr. 4 & 5 Ph. & Mar. *Ioh. Roberts de in com' Suſſ. gen utlegat. &c. Wil. Pellet de Steininge in com' Suſſ. gen. F. Paſch. 2 et 3 Ph. et Mar. Rich. Bowyer de Arundell in com' Suſſ. gen.* Li. lo. Mic. 3 & 4 P. & M. *Will. Danby de in com. Weſtmerl. gen. Rob. Griffyth de Civ' Novæ Sarum in com' Wilts, Draper.* Li. lo. ut ſupra. *Ioh. Hooper de Civ. Novæ Sarū in com' Wilts, gen.* Li lo Mic. 2 & 3 Ph. & Mar. *Wil. Clark de in com. Grif. Curtys de Bradſtock in com' Wilts gen.* Li. lo. ut ſupra, &c. *Tho. Hil. de Denyſes in com. Wilts gen.* F. Hil. 2 & 3 Ph. & Mar. *Edw. Vmpton de London gen.* Li. lo. Mic. 2 & 3 Ph. & Mar. *Tho. Parker de in com' Ioh. Reade de London gen.* F. Hil. 2 & 3 Ph et Mar. *Arth. Allen de civ' Briſtol Merch. Egid. Payne de civ' Briſtol gen. Wil. Hampſhire de London gen.* Li. lo. Mic. 3 et 4 Ph. et Mar. & *Pet. Tayler de Malborow in com' Wilts, Taylor.* Li. lo. Mic. 3 et 4 Ph. et Mar. *Reſp. Regi de quibuſdam tranſgreſſ. & contempt. unde impetit' ſunt.*

Ceſſ. proceſſ. verſ. Georgium Lye. Sine die per demiſe le Royne.

Per cont' rott' de Annis 1 & 2 Ph. & Mar. Rot. 48.

Mid. *Ve. fac' cr' Trin. Edw. Braxden de civ' Wigorn. gen. Georg. Newport de Droitwich in com' Wigorn. gen. Wil. Wigſtone de Wolſtone in com' War. mil.* Li. lo. Mic. 2 et 3 Ph. et Mar. *Radulph. Browne de Woodlowes in com' War gen.* Li. lo. Mic. 3 et 4 Ph. et Mar. *Iohan. Harforde de civ' Covent. gen.* Ceſſ. proceſſ. &c. *Nich. Fryſhe de in com' Rich. Rayleton de in com. Marc. Wyrley de civ. Lichfield, gen. Walt. Iohſon de villa de Kingſton ſuper Hull. Iac. Brenne de in com. gen. Ioh. Payton de in com. Kanc. ar. Ioh. Cheney de in com. Kanc. armigerum. Willielmum Oxenden de in com. Kanc' Armigerum. Tho. Keys de in com. Kanc. gen. Wil. Hannington de in com. Kanc. Ioh. Tyſſars de in com. Nich. Cryſpe de in com. Kanc ar Edw. Herbert de Stawley in com' Salop. ar.* F. Hill. 4 et 5 præd. Ph. et Mar. etc. *Rich. Lloyde de in com' Kanc' gen. Iob. de Knylle de in com. ar. Hen. Iones de in com. mil. Meredith Gaines de in com. gen. & Rich. Bulkeley de in com. mil. Reſp. regi de quibuſdā tranſgr' & contempt. unde impetit' ſunt. Et poſtea, ſcil. Termino ſanct. Trin. Annis 4 & 5 Ph. & Mar. pro eo quod ſufficienter hic in cur' teſtatū eſt quod prædict. Ioh. Harford habuit licentiam recedere a Parliamento &c. Ideo Edw. Griffyn ar. Attornat. dominorū regis & reginæ generalis qui pro ipſis rege & regina in hac parte ſequitur, dicit quod ipſe ulterius in hac parte verſ. præfatum Ioh. Harford proſequi non vult. Ideo ceſſ. hic proceſſ. verſ. eum omnino, &c.*

Non proſ. verſ. Harford tantum.

Sine die per demiſe le Royne.

And

And to deal clearely, this is all that we can find concerning this matter. Thus you may obſerve, that the poore Commons, Members of the Parliament in diebus illis, had no great joy to continue in Parliament, but departed. But now to proceed.

Of Writs of Error in Parliament.

If a Judgement be given in the Kings Bench either upon a writ of Error, or otherwiſe, the party grieved may upon a petition of Right made to the King in Engliſh, or in French (which is not ex debito Juſtitiæ, but for decency, for that the former judgement was given Coram Rege) and his anſwer thereunto, fiat Juſtitia, have a writ of Error directed to the Chiefe Juſtice of the Kings Bench for removing of the Record in præſens Parliamentum, and thereupon the Roll it ſelfe, and a tranſcript in parchment is to be brought by the Chiefe Juſtice of the Kings Bench into the Lords Houſe in Parliament: and after the tranſcript is examined by the Court with the Record, the Chiefe Juſtice carrieth back the Record it ſelfe into the Kings Bench, and then the Plaintife is to aſſigne the errors, and thereupon to have a Scire fac' againſt the adverſe party, returnable either in that Parliament, or the next, and the proceeding thereupon ſhall be ſuper tenorem recordi, & non ſuper recordum. All this, and many more excellent matters of learning are contained in the Records following; whereof a light touch is hereafter given, the Records at large being too long here to be rehearſed. And the proceeding upon the writ of Error is only before the Lords in the Upper Houſe, Secundum legem & conſuetudinem Parliamenti.

The Houſe of the Lords is a diſtinct Court for many purpoſes. 22 E. 3. fo. 3. Regiſt. 17 Lib. Intr. Raſt. 284.

Queritur Guilielmus de Valencia contra Concilium regis, *i.* Juſtic' Coram Rege, pro injuſto judicio tangen allocationem Dioniſiæ filiæ Guilielmi de monte Caniſo ut hæred: ſed dominus Rex ratum habet eorum factum, & judicium reddicum eſt contra Guilielmum de Valencia.

Rot. Par Poſt feſtum Sancti Hil. Anno 18 E. 1. Rot. 8.

If a Nobleman had beene erroneouſly attainted of Treaſon, &c. he might have had his writ of Error in Parliament, notwithſtanding the ſtatute of 33 H. 8. ca. 20. for that muſt be intended of lawfull records of Attainder: but if the Attainder be eſtabliſhed by Authority of Parliament, then he muſt exhibite his petition in Parliament to be reſtored of grace. But now by the ſtatute of 29 El. ca. 2. it is ordained, that no record of Attainder of High Treaſon that then was, for the which the party attainted had been executed for the ſame treaſon ſhould be reverſed for error: but this extendeth only to Attainders of High Treaſon, and not to any Attainder of High Treaſon after that Act, nor to any High Treaſon before, for the which the party was not executed.

Rot. Par. 28 E. 3. Coram Rege Rot. 37 Wigorn. the ſame caſe. 33 H. 8. ca. 20. 29 Eliz. ca. 2.

The Prior and Covent of Montague by their petition declared, that Richard Seimour had obtained an erroneous judgement againſt the ſaid Prior in the Kings Bench, upon a judgement given in the Common pleas upon a fine for the Mano' of Titenhull in the County of Somerſet, &c. And the principall error was for denying of aid of the King where it was grantable and that hanging a writ of Right, the ſaid Richard ſued a Scire fac. And commandment was given to the Chancelor of England, that he ſhould make a writ of poſſeſſion and ſeiſon to be had, and other proceſſe upon that judgement to be made: In this Record you ſhall obſerve excellent pleading.

Rot. Par. 7 R. 2. nu. 20. 8 R. 2. nu. 14.

Error in Parliament upon a judgement in an Appeal of death upon an acquitall of the Defendant, and inquiry of the Abettors, &c.

Rot. Par. 13 R. 2. nu. 15. Sir Thomas Methams caſe.

And (that we may obſerve it once for all) when one ſueth in Parliament to reverſe a judgement in the Kings Bench, he ſheweth in his bill which he exhibiteth to the Parliament ſome error or errors, whereupon he prayeth a Scire facias.

The Biſhop of Norwich ſheweth that an erroneous judgment was given againſt him in the Common pleas for the Archdeaconry of Norwich belonging to his preſentation, and prayed that thoſe errors might be heard, and redreſſed

Rot. Par. 50 E. 3. nu. 48.

there: whereunto answer was made that errors, by the law, in the Common pleas are to be corrected in the Kings Bench, and of the Kings Bench in the Parliament, and not otherwise.

1 R. 2. nu. 28, 29. 2 R. 2, nu. 31. A writ of Error in Parliament betweene William Mountacute Earl of Sarum, and Roger of Mortimer Earle of March of a judgement in the Kings Bench.

[a] The Dean and Chapter of Lichfeild recovered in the Common pleas against the Prior of Newport Pannell: the Prior by writ of Error reverseth the judgement in the Kings Bench: the Dean and Chapter by writ of Error in Parliament reverseth the judgement in the Kings Bench, and affirmeth the judgement in the Common pleas, and a commandment given to the Chancelor, that the judgement in the Common pleas be executed by processe by him to be made.

[a] Ro. Parl. 15 R. 2. nu. 13. & 18 R. 2. nu. 11, 12, 13, 14, 15. This Parliam. of 18 R. 2. is not mentioned in the printed book, because no Act passed at this Parliament. See 2 H. 4. nu. 40.

[b] John Sheppy complains of a judgement in the Kings Bench in a writ of Error.

[b] Ro. Parl. 15 R. 2. nu. 22.

[c] Error in Parliament between William Mountacute Earl of Salisbury, and Roger de Mortimer Earl of March, for the Castle, Town, and honour of Denbeigh, &c. upon a judgement given in the Kings Bench, and had a Scire fac' returnable the next Parliament.

[c] 21 R. 2. nu. 25. 2 H. 4. nu. 13.

[d] William Seward aliàs Cheddre complaineth, that where he by that name was presented and inducted to the Parsonage of Wotton Under Egge in the County of Glouc', and thereof continued the possession by the space of four years, untill the King by untrue suggestion presented Sir John Dawtry to the Parsonage of Underbegge in that County, where there was no such Parsonage called Underbegge, as the said William pleaded in a Quare Impedit brought by the King in the Kings Bench; upon which writ the King recovered by the default the Parsonage of Underbegge, and not Under Egge, whereby upon a writ sent to the Bishop of Worcester, the said William was put from his Parsonage of Under Egge: for which mistaking and error, the judgement for the said John in full Parliament was reversed, and a writ awarded to the said Bishop for the restitution of the said William.

[d] Rot. Par. 1 H. 4. nu. 91.

The Record and Judgment given in the Kings Bench for the King, against Edmond Basset for certain lands, &c. was for divers errors reversed in Parliament, and restitution of the premisses with the mean profits restored to the said Edmond.

Rot. Par. 15 R. 2. nu. 24. & 2 H. 4. nu. 48.

In error in Parliament between Roger Deyncourt, and Ralph de Adderlye for a judgement given in the Kings Bench for the Manor of Anslye in Com War. Sir William Gascoign Chiefe Justice delivered a copy of the Record and processe, word for word, under his hand, &c. to the Clerk of the Parliament, &c.

5 H. 4. nu. 40.

In error in Parliament between Richard Quatermayns and William Hore, &c. upon an erroneous judgement given in the Kings Bench in an action of trespasse, and the Plaintife entred his Attorny of Record to proceed therein.

Rot. Par. 3 H. 5. nu. 19.

John Beauchamp Lord Abergaveny complained in Parliament upon an erroneous judgement given upon a verdict in the Kings Bench in a Scire fac' upon a recognisance in the Chancery for the keeping the Peace. In the Record whereof are excellent points of learning, as well touching the recognisance, as the processe, and issue.

Rot. Par. 10 H. 6. nu. 51. & 11 H. 6. nu. 40.

Error in Parliament, Pasch. 31 H. 6. upon a judgement given in an assise in the Kings Bench, & intratur super marginem, Rot. mittitur in Parliamentum per Johannem Forteſcue Termino Paschæ anno 31 H. 6.

Rot. Par. 31 H. 6.

And to omit many others, to descend to some of later times, Richard Whalley recovered in Assise by verdict against divers tenants, who brought a writ of Error in the Kings Bench, where the judgement in the Assise was affirmed, the tenant complained in parliament for error in the Kings Bench.

Rot. Par. 23 El. Dier 23 El. f. 373.

Error in Parliament upon complaint of Sir Christopher Heydon Knight of a judgement in a writ of Error in the Kings Bench, between the said Sir Christopher Plaintife, and Roger Godsalve and others Defendants, upon a judgment

Rot. Par. 12 Iac.

ment given for the ſaid Roger, &c. againſt the ſaid Sir Chriſtopher in an Aſſiſe before Juſtices of Aſſiſe, wherein the judgment in the Aſſiſe was affirmed in the Kings bench, whereof the complaint was made, ſed non prævaluit.

A Peer of the Realm being indicted of treaſon, or felony, or miſpriſion of treaſon, may be arraigned thereof in Parliament, a Lord Steward being appointed, and then the Lords Spirituall ſhall make a Procurator for them; and the Lords, as Peers of the Realm, during the Parliament are Judges, whether the offence be treaſon, &c. that is ſuppoſed to be committed by any Peer of the Realm, and not the Juſtices, as it appeareth in the Earle of Northumberlands caſe, Rot. Parl. 5 H. 4. nu. 11. 12. See in the Parliament holden 21 R. 2. ſub titulo Pl. Coronæ, in a Roll annexed, &c. before the Steward of England and other Lords Temporall, Richard Earl of Arundels caſe. Rot. Parl. 31 H. 6. nu. 49. Thomas Earl of Devon was arraigned of High Treaſon before Humphry Duke of Buck' Steward of England hac vice, and was acquited by his Peers, 10 E. 4. fo. 6. b. Stanf. Pl. Coron. 153. b.

In caſe of treaſon, &c. the Lords Spirituall make their Proctors. The Peers are Iudges of treaſon, &c. during the Parliament, &c. Rot. Par. 5. H. 4. nu. 11, 12. Rot. Par. 21 R. 2. ſub tit. Plac. Coronæ, &c. Rot. Par. 31 H. 6. nu. 49.

Of Iudicature.

Now order doth require to treat of other maters of Iudicature in the Lords houſe, and of matters of Iudicature in the houſe of Commons. And it is to be known, that the Lords in their Houſe have power of Iudicature, and the Commons in their Houſe have power of Iudicature, and * both Houſes together have power of Iudicature: but the handling hereof according to the worth and weight of the matter would require a whole Treatiſe of it ſelfe; and to ſay the truth, it is beſt underſtood by reading the Iudgments and Records of Parliament at large, and the Journals of the Houſe of the Lords, and the book of the Clerk of the Houſe of Commons, which is a Record, as it is affirmed by Act of Parliament in anno 6 H. 8. ca. 16.

* Vide Placita in Parliam. Anno 33 E. 1. Rot. 33. Nicholaus Segrave adjudge per Prælatos, Comites, Barones & alios de concilio.

At the Parliament at York anno 12 E. 2. *Conſideratum eſt per Prælatos, Comites, Barones, & Communitatem Angliæ.* The Lord Awdeleys caſe. At the Parlat Weſtm' 15 E. 2. Hugh le pier adjudge per les Seignours & Commons. Rot. Parl. 42 E. 3. nu. 10. Sir John at Lee adjudged by the Lords and Commons. Rot. Par. 50 E. 3. 2. parte, A pardon to the Lord Latimer of a Iudgement in Parliament. Rot. Parl. 50 E. 3. nu. 34. Lo. Nevils caſe.

See Rot. Clauſ. 1 R. 2. m. 5. 8, 38, 39. A treſage Councell le Roy, les Seigniors & Commons, &c. Rot. Parl. 1 H. 4. nu. 79. it is no Act of Parliament, but an Ordinance, and therefore bindeth not in ſucceſſion. Rot. Par. 2 H. 5. nu. 13. Error aſſigned that the Lords gave Judgment without petition or aſſent of the Commons. Rot. Par. 28 H. 6. nu. 19. & many others in the reign of King H. 6. King E. 4.

And of later times, ſee divers notable judgements, at the proſecution of the Commons, by the Lords at the Parliaments holden 18 and 21 Jac. Regis, againſt Sir Giles Mompeſſon, Sir John Michel, Viſcount S. Albone Lord Chancelor of England, the Earl of M. Lord Treaſurer of England, whereby the due proceeding of Iudicature in ſuch caſes doth appeare.

Thomas Long gave the Maior of Weſtbury foure pound to be elected Burgeſſe, who thereupon was elected. This matter was examined and adjudged in the Houſe of Commons, Secundum legem & conſuetudinem Parliamenti, and the Maior fined and impriſoned, and Long removed: for this corrupt dealing was to poyſon the very fountain it ſelfe.

In the book of the houſe of Commons at the Parliament holden 8 Eliz. Owneſloe Speaker. fo. 19. 23 El. ib. fo. 14. Popham Attorny generall Speaker.

Arthur Hall a Member of the Houſe of Commons for publiſhing and diſcovering the conferences of the Houſe, and writing a book to the diſhonor of the Houſe, was upon due examination, Secundum legem & conſuetudinem Parliamenti, adjudged by the Houſe of Commons to be committed to the Tower for ſix moneths, fined at five hundred marks, and expelled the Houſe.

Munſton ſtroke William Johnſon a Burgeſſe of B. returned into the Chancery of Record, for which upon due examination in the Houſe of Commons, it was reſolved that ſecundum legem & conſuetudinem Parliamenti, every man muſt take notice of all the Members of the Houſe returned of Record at his

Ib. 2 Aprilis. 1 Mariæ. Vid. 11 H. 6. c. 11. 5 H. 4. ca. 6.

See Rot. Parl. 8 H. 6. nu. 57.

perill: but otherwiſe it is of the ſervant of any of the Members of the Houſe; for there he that ſtriketh, &c. muſt have notice. And the Houſe adjudged Muncton to the Tower, &c.

If any Lord of Parliament, Spirituall or Temporall, have committed any oppreſſion, bribery, extortion, or the like, the Houſe of Commons, being the generall Inquiſitors of the Realm, (comming out of all the parts thereof) may examine the ſame, and if they find by the Vote of the Houſe, the charge to be true, then they tranſmit the ſame to the Lords with the witneſſes and proofs.

Priviledge of Parliament.

Vide Inter leges Edw. Confeſſ. c. 3.

And now after Judicature, let us ſpeake ſomewhat of priviledge of Parliament: Experience hath made the priviledges of Parliaments well known to Parliament men, yet will we ſpeak ſomewhat thereof.

Petitions coram domino rege ad Parliament' poſt feſtum Sancti Mich. Anno 18 E. 1. fo. 7.

Magiſter militiæ Templi petit quod diſtringat (catalla unius de concilio) tempore Parliamenti pro reditu unius domus in London: Rex reſpondet, non videtur honeſtum, quod illi de concilio ſuo diſtringantur tempore Parliamenti, ſed alio tempore, &c. **Whereby it appeareth that a Member of the Parliament ſhall have priviledge of Parliament, not only for his ſervants, as is aforeſaid, but for his horſes, &c. or other goods diſtreinable.**

Plac' coram rege & ejus concilio ad Parliam. ſuum poſt Feſtum Sancti Hil. Anno 18 E. 1. fol. 1. Vide Inf. 10 E. 3. more hereof concerning ſerving of a Citation.

Querela Comitis Cornubiæ, verſus Bogonem de Clare & Priorem Sanctæ Trinitatis London, quod ipſi tempore Parliamenti ipſum comitem in medio aulæ Weſtm̃ ad procurationem ipſius Bogonis citaverunt, quod compareret coram Archiepiſcopo Cantuar̃, &c. Ipſe Prior venit & Bogo ſimiliter, & ponunt ſe in gratiam, miſericordiam, & voluntatem Regis de alto & baſſo, ob quod mandantur turri London: Poſtea venit dictus Bogo & finem fecit domino regi pro prædicta tranſgreſſione per duas mille marcas, &c. & quoad prædict' Comitem reſpondeat Comiti 1000. li. pro tranſgreſſione ſibi fact', &c. & prædictus Prior mittitur ibidē ad faciend' ſecundum quod Theſaurarius ei dicet ex parte dñi Regis.

And yet the ſerving of the ſaid citation did not arreſt, or reſtrain his body, and the ſame priviledge holdeth in caſe of Sub pœna, or other proceſſe out of any Court of equity.

Rot. Parliam. Anno 8 E. 2. in Dorſ. cl. 8 E. 2.

Rex mandavit Juſticiariis ſuis ad Aſſiſas, Jurat', &c. capiend' aſſignat' quod ſuperſedeant captioni eorundem ubi Comites, Barones & alii ſummoniti ad Parliamentum Regis ſunt partes, quam diu dictum Parliam. duraverit.

Idid. m. 33 & 22.

De non procedendo ad capiend' Aſſiſas verſus illos, qui ad Parliamentum Regis apud Eborum venerunt.

In Scacc' ex Originali de Anno 10 E. 3. Ro. 27. No. * That is, in Court of Parliament.

Rex omnibus balivis & fidelibus ſuis ad quos &c. Salutem. Sciatis quod cum curiæ noſtræ in quibus * negotia regni noſtri dedeceantur ubiq; adeo liberæ ſint & exemptæ, & à tempore quo non extat memoria liberæ & exemptæ fuerunt, quod nec aliqua forum eccleſiaſticum concernentia in eiſdem curiis noſtris fieri ſeu exequi, nec aliqui eaſdem curias noſtras ad aliqua forum eccleſiaſticum contingentia faciendum vel exequendum ingredi debeant, vel conſueverunt aliquibus temporibus retroactis, ac Magiſter Henricus de Harewedon clericus, Edmundus de Lukenore & Johannes de Wedlingburgh de eo quod ipſi nuper in Cancellaria noſtra in præſentia venerabilis Patris I. Cantuarienſis Archiepiſcopi Cancellarii noſtri quaſdam citationes ſive monitiones dilecto clerico noſtro Johanni de Thoresby, nec non provocationes, appellationes & inſtrumenta publica ſuper citationibus ſeu monitionibus prædictis in noſtri contemptum & Coronæ noſtræ ac Regiæ dignitatis noſtræ præjudicium, & contra libertatem & exemptionem prædict' fecerunt per inquiſitionem in quam ſe inde in curia noſtra coram dilecto Cancelario noſtro & aliis de concilio noſtro poſuerunt convicti fuiſſent & ea occaſione priſonæ noſtræ mancipati in eadem ad voluntatem noſtram moraturi. Nos de gratia noſtra ſpeciali ad requiſitionem Philippæ Reginæ Angliæ conſortis noſtræ chariſſimæ perdonavimus eiſdem Henrico, Edmundo & Johanni impriſonamentum prædictum; Ita tamen quod nobis ſatisfaciant de redemptione ſua occaſione præmiſſorum, & quod ſuper citationibus, monitionibus, provocationi-

Citationes. This Iohn de Thoresby was the Clerk of the Parliament.

bus

bus, appellationibus ſeu inſtrumentis prædictis in dicta cancellaria noſtra ſic factis proceſſum aliquem non faciant, nec quicquam quod in noſtri vel juris coronæ noſtræ præjudicium cedere poſſit attemptent vel attemptare faciant de cætero quovis modo. In cujus, &c. Teſte Rege apud Turrim London 15 die Aprilis, ex originali de Anno 10 E. 3. Rot. 27. Not.

* Rot. Parl. Ann. 17 E. 4 nu. 36. Vid. 21 E. 4. fol. 38, 39. Rot. Parl. Anno 8 H. 6. nu. 57. Vide infra p. 2.

* Priviledge of Parliament in informations for the King, generally the priviledge of Parliament do hold, unleſſe it be in three caſes, viz. Treaſon, Felony, and the Peace.

Of Statutes, or Acts of Parliament.

There is no Act of Parliament but muſt have the conſent of the Lords, the Commons and the Royall aſſent of the King, and as it appeareth by [a] Records and our [b] Books whatſoever paſſeth in Parliament by this threefold conſent, hath the force of an Act of Parliament.

The difference betweene an Act of Parliament, and an Ordinance in Parliament, is, for that the [c] Ordinance wanteth the threefold conſent, and is ordained by one or two of them.

[a] Vid. 14 R. 2. nu. 15 & 13 H. 4. nu. 25.

[b] 4 H. 7. 18 b. per touts les Iuſtices. 7 H. 7. 14 & 16. 11 H. 7. 27. a. Book prerogative 134.

Forteſcue fo. 20. cap. 18. Dier 1 Mar. 92. [c] Rot. Parl. 25 E. 3. nu. 16. &c. 39 E. 3. 12. 22 E. 3. 3. 8 H. 6. cap. 29. Dier 4 Mar 144. 39 E. 3. 7. Thorp male erravit. Rot. Parl. 37 E. 3. nu. 39. 1 R. 2. nu. 56. diverſity between Acts of Parliament and Ordinances. 2 R. 2. ſtat. nu. 18.

[d] I have read of a reſtitution in blood, and of lands of one William de Laſenby by the King, by the aſſent of the Lords Spirituall, and Commons, (omitting the Lords Temporall) this we hold is an Ordinance, and no Act of Parliament. And when the Clergy is omitted and the Act made by the King, the Lords Temporall, and Commons. See the Rols of Parliament and authorities following, viz. Rot. Parl. Paſch. [e] 15 E. 2. the caſe of the Spencers. 3 R. 2. cap. 3. in print. Our Soveraigne Lord by the common conſent of all the Lords Temporall, and at the petition of the Commons, &c. 7 R. 2. cap. 12. accord. 11 R. 2. nu. 9, 10, 11. See 1 H. 5. c. 7. [f] 21 R. 2. nu. 9. & 10. 6 H. 6. nu. 27. 7 H. 8. Kelw. 184. the opinion of the Juſtices agreeable with the ſaid Acts of Parliament. And note the mutability in this particular caſe of the Spencers, of this High Court of Parliament. The judgement by Parliament in 15 E. 2. againſt the Spencers was in the ſame year by Act of Parliament repealed: that repeale was repealed by authority of Parliament in 1 E. 3. that repeal of 1 E. 3. was repealed by Act of Parliament in 21 R. 2. and that of 21 R. 2. was repealed by authority of Parliament in 1 H. 4. And ſo the judgement againſt the Spencers ſtandeth in force.

[d] 13 H. 4. nu. 20.

[e] Repeal 1 E. 3. cap. 2. ſtat. 1. 15 E. 3. tit. Petition. F. 2. See Rot. Par. An. 1 H. 4. part 5. m. 36. the Iſle of Man given to the King by the Lords Temporall and Commons.

[f] Repeal. 1 H. 4. cap. 3.

The diviſion of Acts of Parliament.

Of Acts of Parliament ſome be introductory of a new law, and ſome be declaratory of the ancient law, and ſom be of both kinds by addition of greater penalties or the like. Againe, of Acts of Parliament, ſome be generall, and ſome be private and particular. All Acts of Parliament relate to the firſt day of Parliament, if it be not otherwiſe provided by the Act.

33 H. 6. fol. 17.

The ſeverall formes of Acts of Parliament.

In ancient time all Acts of Parliament were in form of Petitions. And for the ſeverall forms of Acts of Parliament, ſee the Printes caſe in the 8 Book of Reports. Now for the reading, committing, amending, ingroſſing, voting, and paſſing of Bils in either Houſe, and touching conferences with the Lords, and for the priviledge of any Member of either Houſes, and of their ſervants more then hath been ſaid, they be ſo ordinary and well known, and in ſuch continuall practice, as it were but expence of time to treat any more of them. And for that many times the Rols of the Parliament have not been truly ingroſſed, at the

Dier. 3 Mar. 131. lib. 8. fo. 1. the Princes caſe. Concerning the ingroſſing in Rols of Acts of Parliament. Rot. Parl. 7 H. 4. nu. 65.

the request of the Commons certain of them are to be appointed, who should be at the ingrossing of the Rols of Parliament.

In former times Acts of Parliament were proclaimed by the Sheriffes.

When I read the case of Præmunire in 39 E. 3. upon the statute of 27 E. 3. of Provisors against the Bishop of Chichester, and observing that Serjeant Cavendish of counsell with the Bishop objected two things: First, that the Act whereupon the Writ was grounded, was no statute. Secondly, that if it were a statute, it was never published in the County: whom Sir Robert Thorpe Chiefe Justice answered. Although proclamation be not made in the County, every one is bound to take notice of that which is done in Parliament; for as soon as the Parliament hath concluded any thing, the law intends, that every person hath notice thereof, for the Parliament representes the Body of the whole Realm: and therefore it is not requisite that any Proclamation be made, seeing the Statute took effect before. This gave me to understand, that albeit it was not required by law that Statutes should be published in the County; yet seeing in those dayes and long after, the use of printing came not into this Realm; the use was (as it appeareth by Cavendishes speech) that they should be published in the County, to the end that the Subjects might have expresse notice thereof, and not to be overtaken by an intendment in law, which gave me occasion to search and inquire how this usage was, and how long it continued. And in the end I found, that at every Parliament the Acts that passed were transcribed into Parchment, and by the Kings Writ directed to the Sheriffe of every County of England, and commandement given to him, that all the said statutes in all places through his whole Bayliwick, as well within Franchise as without, where he should finde most fit, that he not only should proclaime them, but to see that they should be firmely observed and kept. And the usage was to proclaim them at his County Court, &c. and there to keep the transcript of the Acts, that who so would, might read or take copies thereof. And this Writ was sometime in Latin and sometime in French, as in those dayes the statutes were enacted in Latine or in French. But an example of the one, and of the other will more illustrate this matter.

John Moore. Printing was invented in Meth in Germany, Anno Domini 1441. and came to us in the raign of H. 6. See Bodin De Methodo historiæ. li. 7. *Vna typographia cum omnibus omnium veterum inventis certare facile potest. Polydor Virgil. de invent. rerum lib. 2. cap. 7. Cardan. de varietate rerum lib. 3. cap. 64.*

At the Parliament in Anno 10. E. 3.

Edwardus Dei grat Rex Angliæ & Franciæ & Dominus Hiberniæ Vic' Norff. Salut. Quædam statuta p nos, Prælatos, Comites, Barones, & alios magnates ad Parliamentum nostrum tentum apud Eborum in Crō. Ascensionis ultim præterit ordinavimus & stabilivimus, prout sequitur, **and recite the severall statutes** verbatim. **And then the Writ concludeth.** Et ideo tibi præcipimus, quod statuta illa & omnes articulos in eisdem contentos in singulis locis in baliva tua, tam infra libertates, quam extra, ubi expedire videris, publice proclamari & * firmiter teneri & observari facias. Teste, &c.

* Note, that the Sheriffe that hath *Custodiam Comitatus*, should see the statutes within his County to be kept.

At the Parliament An. 1 R. 2.

Richard p la grace de Dieu Roy Dengliterre & de France, & Seigniour d' Ireland a nostre Viscount de Norff. Salut. Saches que al honeur de Dieu, & reverence de Saint Esglise & pur nurrer peace, unitie, & concord in touts parts deins nostre realme, le quel nous desirons mult entirement, del assent des Prelats, Dukes, Counts & Barons de mesme nostre realme, al instance & speciall requeste des Commons de nostre Realme assembles a nostre Parliament tenus a Westm. a la quinzim de S. Michael lan de nostre reigne primier avons fait ordeiner & stablier certaine statuts en amendment & relievement de mesme nostre Realme, & en la forme que ensuist. Primerment est assentus & estable, que saint Eglise eit & enjoy ses droitures, &c. **rehearsing all the statutes that passed at that Parliament. And the Writ concludeth thus.** Et pur ceo vous mandons que touts les statuts faces crier & publier, & firmament tener p my vostre Baillie solonq; la forme & tenor de icel, & ceo ne lesses en ascun manner. Done p testmoignants de nostre grand seale al Westm. le primier jour de Feverer lan de nostre reigne primer. **And the like Writs continued untill the beginning of the regn of H. 7. long time after printing within the reign of H. 6. (as hath bin said) came unto us.**

The

Prorogation, Adjournment, Continuance, and What maketh a Seſsion of Parliament.

The paſſing of any Bill or Bils by giving the Royall aſſent thereunto, or the giving any judgement in Parliament doth not make a Seſsion, but the Seſsion doth continue untill that Seſsion be prorogued or diſſolved: and this is evident by many preſidents in Parliament ancient and late.

The Parliament of 14 E. 2. began at Weſtminſter the Wednesday after Old Lent: the firſt monday of the Parliament, the ninth part of their Grain, Wooll and Lambe, &c. was granted to the King, on condition that the King would grant their petitions in a Schedule beginning. These be the petitions which by the Commons and Lords was drawne into a forme of a Statute, and paſſed both Houſes, and the Royall aſſent thereunto, and the ſame exemplified under the Great Seale. After this the Parliament continued, and divers Acts made, and petitions granted, and in the end that Parliament was diſſolved. Rot. Parl. 14 E. 3. ſtat. primo. nu. 7, 8, 9, &c.

In the Parliament holden Anno 3 R. 2. it is declared by Act of Parliament that the killing of John Imperiall Ambaſſadour of Jenoa, was High Treaſon, crimen læſæ majeſtatis, and yet the Parliament continued long after, and divers Acts of Parliament afterwards made, and petitions granted: and in the end the Parliament diſſolved. Rot. Parl. 3 R. 2. nu. 18. &c.

In the Parliament begun the firſt day of March, Anno 7 H. 4 on Saturday the 8 day of May it was enacted by the King, the Lords Spirituall and Temporall, and the Commons, that certain ſtrangers by name, who ſeemed to be Officers to the Queen, ſhould by a day depart the Realm, and proclamation thereof in kinde made by Writ, by authority of Parliament, which Parliament continued, and divers other Acts of Parliament made, and petitions anſwered: and on the 22 day of December 8 H. 4. diſſolved. Rot. Parl. 7 H. 4. nu. 29. &c.

The Parliament begun 7 November, and on the firſt day of the Parliament it was reſolved by all the Judges, that thoſe that were attainted of treaſon, and returned Knights, Citizens, or Burgeſſes of Parliament, that the attainders were to be reverſed by authority of Parliament before they could ſit in the Houſe of Commons: and that after the attainders reverſed, both the Lords, and thoſe of the Houſe of Commons might take their places, for ſuch as were attainted could not be lawfull Judges, ſo long as their attainders ſtood in force: and thereupon the attainders were reverſed by Act of Parliament, and then they took their places in Parliament, and the Parliament continued and divers Acts made. Rot. Parl. 1 H. 7. nu. 1 H. 7. fo. 4. b.

* The Bill of Queen Katherine Howards attainder paſſed both Houſes about the beginning of the Parliament, whereunto the King ſitting the Parliament by his Letters Patents gave his Royall aſſent, and yet the Parliament continued untill the firſt day of April, and divers Acts of Parliament paſſed after the ſaid Royall aſſent given. Divers more might be produced, but theſe ſhall ſuffice. So as albeit Bils paſſe both Houſes, and the Royall aſſent given thereunto, there is no Seſsion untill a prorogation or a diſſolution.

* Rot. Par. 33 H. 8. begun the 16 day of January, and continued till the firſt of April following. On the 12 of February the Queen was beheaded in the Tower, ſitting the Parliament.

The diverſity between a prorogation and an adjournment, or continuance of the Parliament, is, that by the prorogation in open Court there is a Seſsion, and then ſuch Bils as paſſed in either Houſe, or by both Houſes, and had no Royall aſſent to them, muſt at the next aſſembly begin again, &c. for every ſeverall Seſsion of Parliament is in law a ſeverall Parliament: but if it be but adjourned or continued, then is there no Seſsion: and conſequently, all things continue ſtill in the ſame ſtate they were in before the adjournment or continuance.

Prorogo, à porro & rogo, unde prorogatio.

Adjourner, unde adjournare, & adjournamentum, eſt ad diem dicere, or diem dare.

Rot. Parl. 23 H. 8. 24 H. 8. nu. 1. 25 H. 8. nu. 1. 26 H. 8. nu. 1. 27 H. 8. nu. 1. &c. 2 & 3 E. 6. nu. 1. 3 & 4 E. 6. nu. 1. &c.

And the title of divers Acts of Parliament be, At the Seſsion holden by prorogation, or by adjournment and prorogation, but never by continuance or adjournment tantum. And the uſuall forme of pleading is, ad Seſſionem tentam, &c. per prorogationem.

1 Mariæ Seſſ. 2. 28. Eliz. nu. 1. &c. And in every of them it is ſaid [and there continued untill ſuch a day;] and yet in them divers adjournments were. See the Iournall Booke in the Lords Houſe. *Ultimo Iunii 14 Sigilli ex mandato Domina Regina adjournavit præſens Parliament' uſq; in feſtum omnium Sanctorum.* And in the Parliament in Anno 39 Eliz. *Cuſtos magni Sigilli ex mandato Domina Regina* (the Queen being abſent.) *El' Cuſtos Magni* And in the Parliament

We

We have been the longer and more curious for the clearing of this point for two reasons, 1. For that the adjournment or continuance (as before it appeareth) is much more beneficiall for the Common-wealth for expediting of causes, then a prorogation. 2. In respect of a clause in the Act of Subsidie in the Parliament holden in Anno 18 Jac. Regis, which is but declaratory of the former law, as by that which hath been said appeareth.

When a Parliament is called and doth sit, and is dissolved without any Act of Parliament passed, or judgement given, it is no Session of Parliament, but a Convention.

Rot. Parl. 18 R. 2. which began 15 Hilarii.

In the 18 yeare of R. 2. at a Parliament holden before the Duke of York (the King being in his passage to Ireland) the Petitions of the Commons were answered: and a Judgement given in the Kings Bench for the Priory of Hetwoit-pannell, against the Dean and Chapter of Lichfield was reversed, but no Act of Parliament passed. and therefore this Parliament is omitted in the print; but it is no question but it was a Session of Parliament, for otherwise the Judgement should not be of force: and many times Judgements given in Parliament have been executed, the Parliament continuing before any Bill passed.

The House of Commons is a distinct Court.

Nota, the House of Commons is to many purposes a distinct Court, and therefore is not prorogued, or adjourned by the prorogation or adjournment of the Lords House: but the Speaker upon signification of the Kings pleasure by the assent of the House of Commons, doth say: This Court doth prorogue or adjourne it selfe; and then it is prorogued or adjourned, and not before. But when it is dissolved, the House of Commons are sent for up to the higher House, and there the Lord Keeper by the Kings commandement dissolveth the Parliament; and then it is dissolved, and not before. And the King at the time of the dissolution ought to be there in person, or by representation: for as it cannot begin without the presence of the King either in person or by representation, (as before it hath been said) so it cannot end or be dissolved without his presence either in person or by representation. Nihil enim tam conveniens est naturali æquitati, unumquodq; dissolvi eo ligamine quo ligatum est.

Bracton.

33 H. 8. cap. 21. Royall assent by Letters Patents. Dier. 1 Mar. 93. *Commission au 4. Seigniors, &c. a doner royall assent, & indorcement fait.* Soit fait come est desire.

It is declared by Act of Parliament, that the Kings Letters Patents under his Great Seale, and signed with his hand, and declared and notified in his absence to the Lords Spirituall and Temporall and Commons assembled in the Higher House of Parliament, is, and ever was of as good strength and force, as if the Kings person had been there personally present, and had assented openly and publickly to the same.

Of Subsidies and Aides granted by Parliament.

Subsidie is derived of the Verb Subsidiari, which signifieth to be ready to help at need, unde subsidium, which signifieth aide and help at need, so properly called, when Souldiers were ready to helpe the forward of the battell: and aptly was the word so derived, aswell because that which we call now subsidia, Subsidies, were anciently called auxilia, Aides, granted by Act of Parliament upon need and necessity: as also, for that originally and principally they were granted for the defence of the Realme, and the safe keeping of the seas, &c. Communia pericula requirunt communia auxilia.

Ph. Cominæus, Lib. 5. fo. 233.

This word [Subsidie] is common, as well to the English, as to the French. Concerning Subsidies heare what a stranger truly writeth. Reges Angliæ nihil tale, nisi convocatis primis ordinibus, & assentiente populo, suscipiunt. Quæ consuetudo valde mihi laudanda videtur; interveniente enim populi voluntate & assensu crescit robur, & potentia regum, & major est ipsorum authoritas, & feliciores progressus.

Subsidies taken in their generall sense for Parliamentary Aides are divided into perpetuall and temporary: perpetuall, into three parts. viz. into Custuma antiqua

antiqua, ſive magna, cuſtuma nova ſive parva, and into cuſtome of Broad cloth. Temporary, whereof there are three kindes, viz. 1 of Tunnage and Poundage of ancient time granted for a year or years incertainly, and of later times for life. 2. A Subſidie after the rate of 4. s. in the pound for lands, and 2. s. 8. d. for goods. And 3 for an Aide called a Fifteenth. And of theſe in order.

Cuſtuma antiqua ſive magna.

Cuſtuma antiqua ſive magna was by Act of Parliament granted to King E. 1. his heirs and ſucceſſors for tranſportation of three things, viz. Wools, Woolfels, and Leather, viz. for every ſack of wool containing thirty ſix ſtone, and every ſtone fourteen pound, half a mark; and for three hundred woolfels half a mark, and for a laſt of Leather thirteen ſhillings four pence, to be paid as well by Strangers as by Engliſh, Prælati, magnates, & tota communitas conceſſerunt quandam novam conſuetudinem nobis de lanis, pellibus & coriis dimid marc', de 300. pellibus dimid marc', & de laſta coriorum unam marcam. In the ſtatute called confirmationes cartarum Anno 25 E. 1. there is a ſaving in theſe words, Save a nous, & nous heires la cuſtome des leynes, pealx & quires grant per le Comminalty du realm. See alſo the like in the Preamble: * Salva tamen nobis & hæredibus noſtris cuſtuma lanarum, pellium & coriorum per Communitatem dicti regni nobis prim conceſſ.

[a] Note it is ſaid in divers Records, per Communitatem Angliæ nobis conceſſ. becauſe all grants of Subſidies or Aids by Parliament doe begin in the Houſe of Commons, and firſt granted by them: alſo becauſe in effect the whole profit which the King reapeth doth come from the Commons.

7 E. 4. nu. 30. 1 E. 6. ca. 13. 1 Mar. cap. 18. 1 Eliz. ca. 19. & 3

See hereafter, c. 11. Verb. de nous Cuſtomes, &c. Rot. finium An. 3 E. 1. Rot. Pa. 3 E. 1. m. 1. dat. 10 Novemb. which was in the end of the year, for he began his reign 17 Nov. Confirmat. Cartarum Ver. Mag. Cart. 2 part. fo. 36. a.

* Int. brevia de Term Mich. 26 E. 1. In offi. remem. regis.

[a] 12 H. 4. nu. 45. 6 H. 6. nu. 11. 12 E. 4. ca. 3. Iac. Regis accord.

Cuſtuma parva & nova.

In the 31 year of E. 1. the Merchant ſtrangers in conſideration of certain liberties and privileges granted to them, and a releaſe to them of all priſes and takings, gave to the King and his heirs, three ſhillings four pence, ultra antiquam cuſtumam ut prius conceſſ. So as where the Subject paid a Noble, the Stranger paid ten ſhillings, &c. See the ſtatutes of 1 H. 7. cap. 2. 11 H. 7. ca. 14. 32 H. 8. cap. 8.

Cuſtuma is derived of the Frech word *Couſtum*, i. tributum ſeu vectigal. Rot. Cart. 31 E. 1. nu. 44. called Carta mercatoria;

This was queſtioned Ro'. ordinar. Anno 5 E. 2. but allowed of in Parliament, Anno 1 E. 3. 9 E. 3. ca. 1. 27 E. 3. Scar. Staple. ca. 26. F. N. B. 227. d. 259. a.

Cuſtome of what things, ex antiquo.

And it is to be obſerved, that of ancient time no Cuſtome was by Engliſh or Stranger, but for Wools, Woolfels, and Leather. Hereby it appeareth how neceſſary the knowledge of ancient Records, and of the true originall of every thing is.

1 El. Dier 165.

In the reign of E. 3. a great part of the Wools for the which ſuch Cuſtome was granted, and paid, as is aforeſaid, was draped into broad Cloth: whereupon queſtion grew, whether upon the tranſportation of the Cloth, into which the Wool was draped, Cuſtume ſhould be proportionably paid, having regard to the quantity of the Wool ſo converted into Cloth: and it was reſolved, that no Cuſtome ſhould in that caſe be paid, becauſe the Wool by the labour and induſtry of man was changed into another kind of merchandize: wherewith the King held himſelfe ſatisfied, and ſo it appeareth in the Kings own Writs and Records enrolled in the Exchequer.

Of Wools draped into Cloth no Cuſtome was due.

The firſt Act of Parliament that gave any Subſidy of Cloth, was in Anno 31 E. 3. (not printed) viz. fourteen pence of Leiges, and one and twenty pence

of Strangers, for every Cloth of Aſſiſe, and two ſhillings four pence of Lieges, and three ſhillings ſix pence of Strangers for every Cloth of Scarlet, &c. Vide inter Original' de Scaccario, 24 E. 3. Rot. 13. And the reaſon of granting the ſaid Subſidies of broad Cloth was, Quia jam magna pars lanæ regni noſtri in eodem regno pannificitur, de qua Cuſtuma aliqua non eſt ſoluta, per quod proficuum quod de Cuſtumis & Subſidiis lanarum, ſi extra dictum regnum ducerentur, percipere debemus, in multo diminuuntur, &c. And yet if in any caſe the King might by his Prerogative have ſet any impoſition, he might have ſet one in that caſe, for that as it appeareth by that Record, by making of Cloth the King loſt his Cuſtomes of Wool: and therefore for further ſatisfaction of the King for the Cuſtome of Wool at the Parliament holden in Anno 27 E. 3. a Subſidy was granted to the King, his heirs and ſucceſſors, (* over the Cuſtomes thereof due) viz. of every whole Cloth of Aſſiſe not ingrained, four pence, and for the halfe of ſuch a Cloth, two pence, and of every Cloth ingrained five pence, and of the halfe two pence halfe penny, and of every Cloth of Scarlet ſix pence, and of the halfe three pence; and the Alnagers fee is granted to him by Act of Parliament, viz. for the meaſuring of every Cloth of Aſſiſe of the Seller a halfpenny, and of halfe a cloth a farthing for his office, and no more, nor ſhall they take any thing for a cloth that is leſſe: and that he take nothing of the Alnage of any cloth but only of ſuch cloth as is to be ſold. And both in this Act, and in ſome Acts in the reign of H. 3. conſuetudines & cuſtumæ, which are engliſhed, Cuſtomes, are taken for the Subſidies that were granted by Parliament, for verily thoſe were ancient and right Cuſtomes or Subſidies. And in the ſtatute of 11 H. 4. Cuſtomes and Subſidies are uſed as Synonymaes.

Int. Orig. de Scaccario. 24 E. 3. Rot. 13. Ib. 27 E. 3. Rot. 4. See the Second part of the Inſtitutes, Mag. Cart. cap. 30. pa. 60. By 27 E. 3. ſtat. 1. & ca. 4. Cuſtome of Cloth. * Viz. the Subſidies granted in Anno 21 E. 3. The Alnagers fee of the ſubject granted by Parliament. Mag. Car. ca. 30. Conſuetudines. Stat. de Scaccario. 51 H. 3. Cuſtum des Leynes. 11 H. 4. ca. 7.

Butlerage.

Butlerage is a Cuſtome due to the King of two ſhillings of every Tun of Wine brought into this Realm by Strangers: but Engliſhmen payeth it not.

Lib. rubeus in Scacc. fo. 265. Vid. 6 E. 3. fo. 5. & 6. the Archb. of Yorks caſe.

In libro Rubeo in Scaccario in cuſtodia Rememoratoris Regis, fol. 265. the grant of King John to the Merchants of Aquitain trading for wines thence into England of divers liberties, viz. De libertatibus conceſſis mercatoribus vinetariis de Ducatu Aquitaniæ, reddendo regi & hæredibus ſuis 2. s. de quolibet dolio vini ducti per eoſdem infra regnum Angliæ vel poteſtate regis.

Rot. Cartarum Anno 31 E. 1. nu. 44. called Carta mercatoria.

All Merchants Strangers in conſideration of the grant to them by the King of divers liberties and freedoms, conceſſerunt quod de quolibet dolio vini quod adducent vel adduci facerent infra regnum, &c. ſolvent nobis & hæredibus noſtris nomine Cuſtumæ duos ſolidos, &c.

Priſage.

Fleta li. 2. ca. 21. Rot. Pat. 40 H. 3. Rot. Par. 28 E. 1. pro Math. de Columbar'.

Priſage is a Cuſtome due to the King of the wines brought in by the Merchants of England of every Ship having twenty Tuns or more, two Tuns, viz. one before the Maſt, and the other behind, paying twenty ſhillings for each Tun; and this is called certa priſa, and recta priſa, and regia priſa, as in the Record enſuing appeareth, and hereof Merchant Strangers are diſcharged, per cartam mercatoriam, 31 E. 1. Ubi ſupra.

P. Rec. 20 R. 2. Vid. Tr. 33 E. 1. Rot. 124. Priſæ Vinorum in Hibernia.

Memorandum quod rex habet ex antiqua conſuetudine de qualibet nave mercatoris vini 6. carcat' applican' infra aliquem portum Angliæ de viginti doliis duo dolia, & de decem doliis unum de priſa regia pro quodam certo ab antiquo conſtitut' ſolvend'.

Hereby it appeareth that Priſage is due by preſcription, and that it was a certainty of ancient time ordained to be paid.

43 E. 3. ca. 3. & 1 H. 8. ca. 5. Concerning the Alnaging of new Draperies.

It is called Butlerage becauſe the Kings chief Butler doth receive it, and Priſage, becauſe it is a certain taking or purveyance for wine to the Kings uſe.

In Hillary Term, Anno 2 Jac. Regis, upon a ſuit made to the King by the Duke of Lenox, queſtion was moved concerning new Draperies, as Friza-

does

does, Bayes, Northern Cottons, Northern Dozens, Cloth raſh, Durances, Perpetuanoes, Fuſtians, Canvas, Sackcloth, Worſteads, and Stuffs made of Worſtead yarn, whether the King might grant the Alnaging of them with a reaſonable fee, or whether they were within the ſaid Statute of 27 E. 3. And theſe queſtions were by the Kings commandment in this Hilary Term referred to all the Judges of England to certifie their opinions concerning the ſuit to the Lords of his Privy Councell; who upon often hearing of the cauſe, and mature deliberation, and conference amongſt themſelves, in the end in Trinity Term following with one unanimous conſent, certified in writing in theſe words following, viz. To the Lords and others of his Majeſties moſt Honourable Privy Councell. Our duties to your Lordſhips remembred. May it pleaſe the ſame to be advertiſed, that according to your Letters in that behalfe, we have heard the matter touching the fearm of the Alnage, and meaſurage, that is ſought to be granted by his Majeſty of ſundry kindes, as well of new made Drapery, as of other Stuffs made within this Realm. And upon hearing as well of ſome of the part of the Maſter of Orkney, as others, both of the behalf of the Duke of Lenox and Maſter Shaw, have informed our ſelves touching the ſame. And for our opinions we are reſolved, that all new made Drapery made wholly of wool, as Frizadoes, Bayes, Northern Dozens, Northern Cottons, Cloth raſh, and other like Drapery, of what new name ſoever, for the uſe of mans body, are to yeeld Subſidy and Alnage according to the ſtatute of 27 E. 3. and within the office of the ancient Alnage, as may appeare by ſeverall decrees in that behalf made in the Exchequer in the time of the late Queen. But as touching Fuſtians, Canvas, Sackcloth and ſuch like made meerly of other ſtuff then wool, or being but mixed with wool, we are of opinion, that no charge can be impoſed for the ſearch or meaſurage thereof, but that all ſuch Patents ſo made are void, as may appear by a Record of the 11. yeare of H. 4. wherein the reaſon of the judgment is particularly mentioned, which we held not amiſſe to ſet done to your Lordſhips, which is thus, The ſame King H. 4. granted the meaſurage of all woollen Cloth and Canvas that ſhould be brought to London to be ſold by any ſtranger or denizen (except he were free of London) taking one half penny for every piece of Cloth ſo meaſured of the ſeller, and one other half penny of the buyer, and ſo after the rate for a greater or leſſer quantity, and one penny for the meaſuring of 100. els of Canvas of the ſeller, and ſo much more of the buyer. And although it were averred that two other had enjoyed the ſame office before with the like fees, *viz.* one Shering by the ſame Kings grant, and one Clytheroe before by the grant of King R. 2. yet, amongſt other reaſons of the Judgment, it was ſet downe and adjudged, that the former poſſeſſion was by extortion, and coertion, & without right, and that thoſe Patents were *in oneracionem, oppreſſionem & depauperationem populi domini regis, & non in emendationē ejuſdem populi, &c.* and no benefit to the King, and therefore the Patents void. And as touching the narrow new ſtuffe made in Norwich and other places with worſtead yarn, we are of opinion that it is not grantable, nor fit to be granted, for we cannot find, that there was ever any Alnage upon Norwich worſteads. And for theſe ſtuffs, if after they be made and tacked up for ſale by the makers thereof, they ſhould be again opened to be viewed and meaſured, they will not well fall into their old plaits to be tacked up as before, which will be (as is affirmed) a great hinderance to the ſales thereof in groſſe, for that they will not then appear to be ſo merchandizable, as they were upon the firſt making of them up. And even ſo we humbly take our leaves. Serjeants Inn, the 24. of June. 1605. Which Certificate being read by the Lords of the Privy Councell (I being then Attorny generall and preſent) was well approved by them all, and commandment given, that it ſhould be kept in the Councell Cheſt to be a direction for them to give anſwer to all ſuits of that kind.

See Rot. Parl. 50 E. 3. nu. 142. Cogware Kerſeys.

See hereafter, cap. 67.

See Rot. Parl. 9 H. 4. nu. 14. Kendall Clothes, &c. 11 H. 4. c. 2. enact. 11 H. 4. nu. 26. for remnants of Cloth, &c. 11 H. 4. c. 7. Stat. 2.

And it is to be obſerved, * that Acts of Parliament that are made againſt the freedome of trade, merchandizing, handycratts, and myſteries, never live long.

37 E. 3. ca. 5. 6. 38 E. 3. ca. 2. Lib. 11. fo. 54. de Taylers de Ipſwich.

Good Bils or motions in Parliament ſeldome die.

Bils, motions.

8 E. 2. nu. 17 E. 3. nu. 49. 1 R. 2. nu. 82. 4 R. 2. nu. 36. 9 R. 2. nu. 44. 1 H. 4. nu. 121. 2 H. 4. nu. 83. 2 H. 4. nu. 70. 11 H. 4. nu. 47. 1 H. 5. nu. 23. 7 H. 5. nu. 18. 1 H. 6. nu. 41. 7 E. 4. nu. 20. *Acts of Parliament.* 2 E. 3. cap. 2. 25 E. 3. ca. 5. 4 H. 4. ca. 22. 1 H. 5. cap. 1. 15. H. 6. cap. 14. 1 R. 3. ca. 3. 21 H. 8. cap. 5. 23 H. 8. cap. 4. 26 H. 8. cap. 3. 31 H. 8. ca. 1. 32 H. 8. cap. 32. 2 E. 6. cap. 8. & 13. 1 & 2 Ph. & Mar. cap. 13. Vide infra, cap. 8. pa.

It is an obſervation proved by a great number of preſidents, that never any good bill was preferred, or good motion made in Parliament, whereof any memoriall was made in the Journall booke, or otherwiſe, though ſometime it ſucceeded not at the firſt, yet hath it never died, but at one time or other hath taken effect; which may be a great encouragement to worthy and induſtrious attempts, as taking ſome few examples for many, which I have quoted in the margent.

The Subſidy of Tunnage and Poundage.

By the ſubſequent Records you ſhall obſerve 13. things. 1. The grant of Poundage only. 2. Of Tunnage and Poundage. 3. Severall rates, ſometimes 6. d. 8. d. 12. d. for Poundage. 4. Sometimes 2. s. 18. d. 3. s. 5. hac vice, 1, 2, 3, 4. years, for life. 6. To Merchants, &c. 7. To have intermiſſion and to vary, leſt the King ſhould claim it as a duty. 8. Expreſſed upon free gift. 9. Upon condition to keep the Seas, and for commerce. 10. That is ever the conſideration and cauſe of the grant. 11. Granted without retroſpect. 12. Sometimes double of Strangers. 13. Cloth excepted, that it be not ſubject to Tunnage and Poundage. 31 H. 6.

The Records.

[a] 47 E. 3. nu. 12.
[b] 6 R. 2. nu. 13.
[c] 7 R. 2. ſtat. 1.

[a] Of Poundage only, and 6. d. in the pound, for two years upon condition, &c.

[b] 6. d. for Poundage, and 2. s. for Tunnage of wine, hac vice.

[c] 6. d. of every pound of merchandize, and 2. s. of every tun of wine, upon condition, &c. hac vice.

[d] 5 R. 2, nu. 40.
9 R. 2, nu. 11.
10 R. 2, nu. 18.
11 R. 2, nu. 12.
[e] 13 R. 2. nu. 20.
[f] 14 R. 2. nu. 12.
[g] 17 R. 2. nu. 12.
[h] 2 H. 4. nu. 9.
[i] 4 H. nu. 28.
[k] 6 H. 4. nu. 9.
8 H. 4. nu. 9.
9 H. 4. nu. 27.
[l] 11 H. 4 nu. 45.
[m] 13 H. 4. nu. 10.
[n] 1 H. 5. nu. 17.
[o] 3 H. 5. nu. 50.

[d] Sometimes to have intermiſſion, and to vary, leſt the King ſhould claim as duties.

[e] For Tunnage of wine 3. s. and 6. d. for Poundage for one year.

[f] 3. s. for Tunnage of wine, 12. d. for Poundage, hac vice.

[g] 6. d. for Poundage, and 18. d. for Tunnage of wine for three years.

[h] 8. d. for Poundage and 2. s. for Tunnage of wine.

[i] 12. d. for Poundage and 3. s. for Tunnage of wine for three years.

[k] 12. d. for Poundage, and 3. s. for Tunnage of wine for ſeverall times upon condition, ſometime for one year. In theſe and moſt of the former granted upon condition for due employment [l] of their own good will, and ſo entred, and the King to have a certain ſum [m] more expreſſly.

[n] 12. d. for Poundage, and 3. s. for Tunnage of wine for four years.

[o] The like Subſidy is granted to the King for his life upon conditions, &c. which was the firſt grant of Tunnage and Poundage for life, which was a leading grant, as hereafter appeareth.

[p] 2 H. 6. nu. 14.
[q] 3 H. 6. nu. 17.
9 H. 6. nu. 14.
[r] 23 H. 6. nu. 16.
[s] 31 H. 6. nu. 8. & cap. 8.
* Nota.
[t] 4 E. 4. & 12 E. 4. ca. 3. in print.

[p] The Subſidy of Poundage only for two years.

[q] Tunnage of wine and Poundage granted for ſeverall years.

[r] Tunnage and Poundage, ut prius of Denizens, double of Strangers.

[s] Tunnage of wine and Poundage granted to H. 6. for life with an exception of all woollen * Cloth: and here Cloth was firſt excepted, and was a leading exception in all ſubſequent Acts.

[t] Tunnage of wine and Poundage granted to E. 4. for life with no retroſpect, but for the time to come.

[u] Rot. Par. 1 H. 7. not Printed, for he had many ſubſidies, but printed none.

[u] At the Parliament holden Anno 1 H. 7. a like Act was made for the grant of the Subſidies of Tunnage and Poundage to him for his life.

[x] And the like Subſidy was granted to King H. 8. at the Parliament holden Anno 1. of his reign for his life.

* Rot. Par. 1 H. 8. not printed. Vid. 6 H. 8. ca. 14. in print.

The

The like grant was made to E. 6. Queen Mary, Queen Eliz. and King James for their ſeverall lives, and in all theſe it is affirmed, that the like grants were made by Act of Parliament to King H. 7. and King H. 8. 1 E 6.c.13. 1 Mar.cap.18. 1 Eliz.cap.19. 1 Jac.cap.33.

The conſideration of the grant of theſe Subſidies of Tunnage and Poundage is ever, as is aforeſaid, expreſſed in the grant for the keeping and ſafegaurd of the Seas, and for intercourſe of merchandize ſafely to come into this Realm, and ſafely to paſſe out of the ſame. And this pertaineth properly to the office of the Lord Admirall to ſee the conſideration of the Act to be performed. * They are granted of the free good will of the ſubjects, and ſo expreſly ſet down in the Parliament Roll. * Rot.Par.11 H.4. nu. 45. 13 H.4. nu. 10.

In King James his reign, when I was a Commiſſioner of the Treaſury, theſe Subſidies granted for life amounted to One hundred and threeſcore thouſand pounds per annum, and ſo letten to farm. The values of the merchandize for the which the Subſidy of Poundage is paid, do appear in a book of rates in print, whereby the Merchant knowes what he is to pay. The Subſidy of Tunnage of wine is certain in theſe Acts by the contents of the Veſſels: and none of theſe Acts doe extend to any other liquid merchandize imported or exported, but unto wines only: and ſeeing nothing is more incertain then the continuance of the value of merchandizes wherefore the Subſidy of Poundage is paid, it were good at every grant of them to ſet down the rates in a ſchedule annexed to the bill. A booke of rates or values.

Subſidies temporary and uſuall at this day.

Subſidies temporary and uſuall at this day. And this is when the Commons in Parliament freely grant to the King an aid to be levied of every Subject of his lands or goods after the rate of 4 s. in the pound for lands, and 2 s. 8 d. for goods, and for Aliens for goods double, to ſuch ends and for ſuch conſiderations, and to be paid at ſuch times, as by the Acts thereof (which are uſuall and frequent) doe appear. And in former times in this kind of Subſidy, this order was obſerved, that over and above the Subſidy of Tunnage and Poundage, the Commons never gave above one Subſidy of this kind, and two Fifteens, (and ſometime leſſe) one Subſidy amounting to Seventy thouſand pounds, and each Fifteen at Twenty nine thouſand pounds, or near thereabouts; not above one Subſidy, which did riſe to Twenty thouſand pounds, the Clergy gave not.

At the Parliament holden in 31 Eliz. the Commons gave two Subſidies, and four Fifteens, which firſt brake the circle.

In 35 Eliz. three Subſidies and ſix Fifteens.

In 39 Eliz. three Subſidies and ſix Fifteens.

In 43 Eliz. four Subſidies and eight Fifteens, &c.

In 21 Jac. Regis, three Subſidies and ſix Fifteens in ſhorter times then had been before.

In 3 Car. Regis, five Subſidies in ſhorteſt time of all.

And it is worthy of obſervation how quietly Subſidies granted in forms uſuall and accuſtomable (though heavy) are borne; ſuch a power hath uſe and cuſtome: On the other ſide, what diſcontentments and diſturbances Subſidies framed in new molds doe raiſe, (ſuch an inbred hatred novelty doth hatch) is evident by examples of former times:

As that of 4 R. 2. a new invention of Subſidies of the Kings Subjects of either ſex by the poll, &c. for the furniſhing of the Earl of Buckingham for his going into France, whereupon a ſtrong and a ſtrange Rebellion enſued, wherein three great and worthy Officers were by the raſcall Rebels barbarouſly and wickedly murdred, viz. Simon Sudbury Archbiſhop of Canterbury, Chancelour of England, the Prior of S. Johns of Jeruſalem, Treaſurer of England, and Sir John Cavendiſh, Chiefe Juſtice of England. Rot.Par.4 R.2. nu.15. 5 R.2.nu.32.

In 4 H. 7. another like new found Subſidy was granted, which raiſed a rebellion in the North, in which the noble Earl of Northumberland a Commiſſioner in that Subſidy, was by the Rebels cruelly and cauſeleſly ſlain. Hollenſh. Chron. 769.

In

Hollensh. Chron. 891.

In Anno 16 H. 8. to furnish the King for his going in his royall person into France, a new device for getting of mony was set on foot, which made the headlesse and heedlesse multitude to rise in rebellion, untill Charles Brandon the noble Duke of Suff. quieted, and dispersed them.

Rot. Par. 9. E. 3. nu. 5.

At the Parliament holden in 9 E. 3. when a motion was made for a Subsidy to be granted of a new kind, the Commons answered, that they would have conference with those of their severall Countries and places, who had put them in trust, before they treated of any such matter

9 H. 6. nu. 15. 10 H. 6 nu. 50.

Vide 9 H. 6. nu. 15. Every Knights fee to pay 20. s. and so according to the value under or over, and so of the Clergy for lands purchased since 20 E. 1. And all other having 20 l. lands not holden as is aforesaid, 20 s. &c. This whole Subsidy for certain doubts the King utterly released, so as there is no mention made of the same: But hereof thus much shall suffice.

Sæpe viatorem nova, non vetus orbita fallit.

Of Fifteens, Quinzims, &c.

Fifteens, Quinzim or Task, or Quinta decima.

A Fifteen is a temporary Aid granted to the King by Parliament, which without further inquiry is certaine, and therein differeth from the Subsidy, which is ever uncertaine, untill it be assessed.

The Fifteen of ancient time was the fifteenth part of goods moveable, but in 8 E. 3. all the Cities, Boroughs, and towns in England were rated certainly at the fifteenth part of the value at that time generally upon the whole town, whereof you shall read more at large in the Second part of the Institutes, in the last Chapter of Magna Carta, Verb. Quintam deciman partem bonorum mobilium.

Second part Inst. Mag. Carta cap. ultimo.

Of Tenths.

There is decima pars of the Laity, and for the most part of Cities and Boroughs by their goods (Vid. 1 R. 2. nu. 26.) which proportionably is, secundum decimam quintam partem. That which we call Tax, Tallage, Tenth, and Fifteen, the Saxons called Geldinn, * we use the word changing g to y, for gelding, yeelding, &c.

* Doomsday. Norff. in Wanelunt, i. Wayland, & ibid. in Frebringe in Massingham, &c.

No * Subsidy before the end of the Parliament, because it is to accompany the pardon.

* Rot. Par. 11 R. 2. nu. 11. This is contained in the Act of Subsidy, and so an Act of Parliament: and accordingly Subsidies, &c. have been granted, as in the book of statutes appeareth.

Of Acts of Parliament of confirmation of Letters Patents.

Rot. Par. 2 H. 5. nu. 20. 1 H. 6. nu. 46. 3 H. 7. to the Queen. 6 H. 8. to the Duke of Suff.

We have read of particular Acts of confirmation of Letters Patents; but the first of lands, &c. that was the more generall, was the statute of 31 H. 8. ca. 13. of Monasteries (to make those lands the more passable) but after that, generall Acts of confirmation of Letters Patents have been very frequent.

How the Lords give their voices.

In the Lords House, the Lords give their voices from the puisne Lord seriatim by the word of [content,] or [not content.]

Rot. Par. 6 H. 6. nu. 27.

A bill was preferred at the Parliament holden in Anno 6 H. 6. that no man should contract or marry himself to any Queen Dowager of England without speciall licence and assent of the King, on paine to lose all his goods and lands. The Bishops and Clergy assented to this bill, by the word of [content,] as far forth as the same swarved not from the law of God and of the Church, and so as the same imported no deadly sin. At this time there were besides the Archbishops

Biſhops and Biſhops, 27 Abbots and 2 Priors, (albeit in troth the number was many times uncertain, as in the cloſe Roll it appeareth) which ſeverally held per Baroniam, and were Lords of Parliament, and ſo continued untill they were diſſolved in the reign of H.8. The entry of the ſaid Act of 6 H.6. in the Roll is: It is enacted by the King, Lords Temporall, and Commons, that no man ſhould contract or marry himſelf to any Queen of England, without the ſpeciall licenſe and aſſent of the King, on pain to loſe all his goods and lands. The Biſhops and Clergy aſſented to this Bill, as far forth as the ſame ſwerved not from the law of God, and of the Church, and ſo as the ſame imported no deadly ſinne.

How many Lords Spirituall in former times.

This is holden to be an Act of Parliament: Firſt, for that the aſſent of the Clergie could not be conditionall. Secondly, it was not againſt the law of God nor of the Church, nor imported any deadly ſinne to make this law by authority of Parliament, as it appeareth by Magna Carta cap. 7. which had by 32 Acts of Parliament been confirmed, and many others.

This Law was made after the mariage of Queen Katherine Dowager of H.5. with Owen ap Meredith ap Grono (deſcended of the Princes of Wales) by whom ſhe had iſſue Edmond of Hadham aforeſaid, Earle of Richmond, and Jaſper of Hatfield, after Earle of Pembroke, and Duke of Bedford.

How the Commons give their voices.

The Commons give their voices upon the queſtion, by Yea or No; and if it be doubtfull, and neither party yeeld, two are appointed to number them; one for the Yea, another for the No: the Yea going out, and the No ſitting: and thereof report is made to the Houſe. At a Committee, though it be of the whole Houſe, the Yeas go of one ſide of the Houſe, and the Noes on the other, whereby it will eaſily appear which is the greateſt number.

Pl. com. 126 miſtaketh it, and that the Clark number them.

How Parliaments ſucceed not well in five Caſes.

It is obſerved by ancient Parliament men out of Record, that Parliaments have not ſucceeded well in five Caſes. Firſt, when the King hath been in diſpleaſure with his Lords, or with his Commons. 2. When any of the Great Lords were at variance between themſelves. 3. When there was no good correſpondence between the Lords and the Commons. 4. When there was no unity between the Commons themſelves. 5. When there was no preparation for the Parliament before it began.

[a] For the 1: So eſſentiall is the Kings good will towards his Commons, that it was one of the petitions of the Commons to the King, that he would require the Archbiſh. & all other of the Clergy to pray for his eſtate, for the peace and good government of the land, & for the continuance of the Kings good will towards his Commons: wherennto the thrice noble King aſſented with theſe effectuall words, The ſame prayeth the King: & many times the like petitions for the Lords. [b] How the King in all his weighty affairs had uſed the advice of his Lords & Commons, (ſo great a truſt & confidence he had in them.) Alwaies provided, that both Lords & Commons keep them within the circle of the law & coſtome of the Parliament.

[a] Rot. Parl. 37 E.3. nu.1. and the Writ to the Clergie, *De orando pro rege & regno*, which was uſuall in thoſe dayes.

[b] Rot. Parl. 43 E.3. nu.1. 25 E.3. nu.15. 50 E.3. nu.2.

[c] For the ſecond: at the Parliament holden in 4 H. 6. what variance was there between the Duke of Gloc. and the B. of Winchester, and their friends on either ſide? the ſucceſſe was, that little was done in any Parliamentary courſe at that Parliament, and that little was of no moment.

[c] Rot. Par. 4 H.6. nu.12 See the Acts of that Parliament.

[d] At the Parliament holden in the third year of H.6. the great controverſie was between John Earl Marſhall, and Richard Earl of Warwick with like ſucceſſe.

[d] Rot. Par. 3 H. 6. nu.1 & 10.

[e] The like controverſie between William Earl of Arundell and Thomas Earl of Devon, for ſuperiority of place, with like event. And many more might be cited. And alwayes in the beginning amity was made between the Oranders of the Realm by ſhaking of hands and kiſſing, and ſometime by [*] ſubmiſſion.

[e] Rot. Parl. 27 H.6. nu.18.

[f] Rot. Par. 2 H.4. nu.14. 5 H.4. nu.18.20.

[*] Rot. Parl. 21 R.2 by the Count of Arundell to the D. of Lancaſt. 4 H.6. nu.12.

For the third, when it was demanded by the Lords and Commons what might be a principall motive for them to have good ſucceſſe in Parliament, it was anſwered, Eritis inſuperabiles, ſi fueritis inſeparabiles: Exploſum eſt illud diverbium; Divide, & impera: cum radix & vertex imperii in obedientium conſenſu rata ſunt.

For

For the fourth, unity between the Commons themselves. It is most necessary in both these, and agreeable to the Parliament in the Book of Judges. Quasi homo unus, eadem mente, uno consilio.

Rot. Parl. Anno 11 H. 4. nu. 10. the King desired this unity.
20 Judicum.

For the fifth, the Summons of Parliament is by forty dayes or above before the sitting, to the end that preparations might be had for the arduous and urgent affaires of the realm: and that both the King, according to the example of King David, and likewise the Nobles and Commons should prepare; for præparatæ meditationes sunt semper saniores & meliores quam properatæ, wherein both Houses may greatly expedite the businesse of the Common-wealth in Parliament, if they will pursue the ancient custome of Parliament, viz. in the beginning thereof to appoint a select Committee to consider of the Bills in the two last Parliaments that passed both Houses, or either of them, and such as had been preferred, read, or committed, and to take out of them, such as be most profitable for the Common-wealth.

1 Chron. cap. 28.

The honour and antiquity of the Parliament.

For the honour and antiquity of the Parliament, see the first part of the Institutes, Sect. 164. Verb. Veigne les Burgesses, and in the Preface to the ninth Book of my Reports, fo. 1, 2, 3, 4, &c. whereunto you may adde, Inter leges Edwardi regis, cap. 8. De decimis Ecclesiæ reddendis, Sect. De apibus vero, &c. Hæc enim prædicavit beatus Augustinus, & concessa sunt à rege Baronibus & populo. A grant by expresse Act of Parliament. Vide infra, cap. 79. pag.

7 H. 6. 28. lib. 11. fo. 14.
Inter leges Edwardi regis, ca. 8.

The power and jurisdiction of the Parliament.

[a] Of the power and jurisdiction of the Parliament, for making of laws in proceeding by Bill, it is so transcendent and absolute, as it cannot be confined either for causes or persons within any bounds. Of this Court it is truly said: [b] Si antiquitatem spectes, est vetustissima, si dignitatem, est honoratissima, si jurisdictionem, est capacissima.

[c] Huic ego nec metas rerum, nec tempora pono.

Yet some examples are desired. [d] Daughters and Heirs apparent of a man or woman, may by Act of Parliament inherit during the life of the Ancestor.

[e] It may adjudge an Infant, or Minor of full age.

[f] To attaint a man of Treason after his death.

[g] To naturalize a meere Alien, and make him a Subject borne. [h] It may bastard a childe that by law is legitimate, viz. begotten by an Adulterer, the husband being within the foure Seas.

To legitimate one that is illegitimate, and borne before marriage absolutely. And to legitimate secundum quid, but not simpliciter. As to take one example for many.

[i] John of Gaunt Duke of Lancaster had by Katherine Swinford before marriage foure illegitimate children, *viz.* Henry, John, Thomas, and Joane. And because they were borne at [k] Beaufort in France, they were vulgarly called Henry De Beaufort, &c. John before the 20 year of R. 2. was Knighted, and Henry became Priest. [l] At the Parliament holden 20 R. 2. the King by Act of Parliament in forme of a Charter doth legitimate these three sonnes, and Joane the daughter: and the Charter beginneth thus. Rex, &c. Charissimis consanguineis nostris nobilibus viris [m] Johanni Militi: [n] Henrico Clerico: [o] Thomæ [p] domicello, ac dilectæ nobis nobili mulieri [q] Johannæ Beaufort domicellæ, Germanis prædilectissimi avunculi nostri, Johannis Ducis Lancastriæ natis ligeis

[a] See 13 Eliz. cap. 1.
39 H. 6. 15.
Vide infra, ca. 79.
[b] Fortesc. ca. 18.
[c] Virgil.
[d] Rot. Par. 12 E. 4. nu. 20, 21, 22. the case of the wives of the Duke of Clarence and Glocester.
[e] 12 E. 4. nu. 34. Duke of Buckingham.
[f] 21 R. 2. nu. 27. Sir Ro. Plesington.
31 H. 6. cap. 1.
[g] This is usuall in many Parliaments.
[h] Rot. Par. 5 & 6 E. 6. the Lo. Marquisse of Winchesters case.
[i] Rot. Par. Anno 20 R. 2. m. 6.
[k] Beaufort came to the House of Lanc. by marriage between *Blanch* of Artois, and *Edmond* first Earle of Lancast.
[l] Rot. Pat. 20 R. 2. membr. 7.
[m] This *John* in Anno 21 R. 2 was created Earle of Somerset, and Marquisse Dorset. But in 1 H. 4. the Marquisship was taken away by Parliament.
[n] This *Henry* was after Bishop of Winchester, Cardinall of S. Ewsleby, and Chancellor of England.
[o] This *Thomas* was in 21 R. 2. created Earl of Dorset.
[p] For *Domicellus, &c.* see *Lamb. inter leges Edw. fo.* 139. b. *Nos indiscrete domicellos de pluribus dicimus, quia Baronum filios vocamus domicellos, Angli vero nullos, nisi natos regum.*
[q] *Joane* was first married to *Ralph* the first Earle of Westmerland, and after to *Robert Ferrers* Lo. of Owseley.

nostris

noſtris Salutem, &c. Nos dicti avunculi noſtri genitoris veſtri precibus inclinati, vobiſcũ qui (ut aſſeritur) defectũ nataliũ patimini, ut hujuſmodi defectu (quẽ ejuſq; qualitatis quaſcunq; præſentibus habere volumus pro ſufficienter expreſſis) non obſtante ad quæcunque honoris dignitates, (* excepta dignitate regali) præheminentias, ſtatus, gradus, & officia publica & privata tam perpetua quam temporalia, atq; feudal' ac nobil' quibuſcunque nominibus nuncupantur, etiamſi ducatus, principat', comitat', Baronia, vel alia feuda fuerint, etiamſi mediate, vel immediate, vel à nobis dependeant ſeu teneantur, præfici, promoveri, eligi, aſſumi & admitti, illaq; recipere, retinere, perinde libere & licite valeatis, ac ſi de legitimo thoro nati exiſteretis, quibuſcunq; ſtatutis ſeu conſuetudinibus regni noſtri Angliæ in contrarium editis ſeu obſervatis (quæ hic habemus pro totaliter expreſſis) nequaquam obſtantibus; de plenitudine noſtræ regalis poteſtatis, ac de aſſenſu Parliamenti noſtri tenore præſentium diſpenſamus, voſque & veſtrum quemlibet Natalibus reſtituimus, & legitimamus. In cujus rei teſtimonium. Teſte Rege apud Weſtm. 9 die Febr. Per ipſum regem in Parliamento.

* Nota.

In this Act are divers things worthy of obſervation. 1. The names whereby they were legitimated. 2. That this legitimation was not ſimpliciter, but ſecundum quid: for they were legitimated and made capable of all dignities except the Royall Dignity: ſo as this legitimation extended not to make them or their poſterities inheritable to the Crowne, but to all other dignities. 3. That before their legitimation, they were not created to any of their dignities. 4. The briefe and artificiall penning of this legitimation, with generall words, as if the particularity were expreſſed, and with a briefe non obſtante, and with as little blemiſh as may be. 5. And hereby it appeareth, that [a] H. 7. being ſon of Edmond of Hadham E. of Richmond, & Margaret his wife daughter & heir of John de Beauford, D. of Somerſet: which Margaret lineally deſcended from the ſaid John de Beauford, legitimated & made capable of all dignities, as is aforeſaid, excepta regali dignitate, that the beſt title of H. 7. to the Crown, was by Elizabeth his wife, eldeſt daughter of E. 4. Yet before this mariage the Crown was by Act of Parliament intayled to H. 7. and to the heirs of his body, the right of the Crowne then being in the ſaid Elizabeth, eldeſt daughter of E. 4. 6. In this Act, the ſaid Thomas before his legitimation could not be called Eſquire, and therefore he hath this addition of * Domicello, either derived of the *French* word Domoicell, which ſignifieth a young ſouldier not yet knighted, or ſignifieth nobly borne. And note, Johan. the daughter, had the addition of De Beauford and Domicella in that ſenſe alſo.

[a] Nota, pro corona. Rot. Parl. Anno 1 H. 7. not in print.

[b] H 4 cap. 2. like to H. 4. the right of the Crowne being then in the deſcent from *Philip* daughter and heir of *Lionel* Duke of Clarence. Vid. 1 H. 7. 12, 13. 25 H. 8. cap. 22. repeal by 28 H. 8. cap 7. & 1 Mar. Parl. 1. cap. 1. See 13 Eliz. ca. 1. in principio.

* See Hovenden, pag. 608. for this word *Domicel.*

[b] Rot. Parl. 32 H. 8. The attainder of *Tho. Cromwell* Earle of Eſſex.

7 And albeit I finde an attainder by Parliament of a ſubject of High Treaſon being committed to the Tower, and forth comming to be heard, and yet never called to anſwer in any of the Houſes of Parliament, although I queſtion not the power of the Parliament, for without queſtion the attainder ſtandeth of force in law: yet this I ſay of the manner of the proceeding. Auferat oblivio, ſi poteſt; ſi non utcunque ſilentium regat: for the more high and abſolute the juriſdiction of the Court is, the more juſt and honourable it ought to be in the proceeding, and to give example of juſtice to inferiour Courts. But it is demanded, ſince he was attainted by Parliament, what ſhould be the reaſon that our Hiſtorians do all agree in this, that he ſuffered death by a law which he himſelfe had made? For anſwer hereof, I had it of Sir Thomas Gawdye Knight, a grave and reverend Judge of the Kings Bench, who lived at that time, that King H. 8. commanded him to attend the chiefe Juſtices, and to know whether a man that was forthcomming might be attainted of High Treaſon by Parliament, and never called to his anſwer. The Judges anſwered, that it was a dangerous queſtion, and that the High Court of Parliament ought to give examples to inferiour Courts for proceeding according to juſtice, and no inferiour Court could do the like; and they thought that the High Court of Parliament would never do it. But being by the expreſſe commandement of the King, and preſſed by the ſaid Earle to give a direct anſwer: they ſaid, that if he be attainted by Parliament, it could not come in queſtion afterwards, whether he were called or not called to anſwer.

And albeit their opinion was according to law, yet might they have made a better answer, for by the Statutes of Mag. Cart. ca. 29. 5 E. 3. cap. 9. & 28 E. 3. cap. 5. no man ought to be condemned without answer, &c. which they might have certified, but facta tenent multa, quæ fieri prohibentur; the act of Attainder being passed by Parliament, did bind, as they resolved. The party against whom this was intended, was never called in question, but the first man after the said resolution, that was so attainted, and never called to answer, was the said Earl of Esser; whereupon that erroneous and vulgar opinion amongst our Historians grew, that he died by the same law which he himselfe had made. The rehearsall of the said Attainder can work no prejudice, for that I am confidently perswaded, that such honourable and worthy members shall be from time to time of both Houses of Parliament, as never any such Attainder, where the party is forth comming, shall be had hereafter without hearing of him.

[a] Nunquid lex nostra judicat hominem, nisi prius audierit ab ipso, & cognoverit quid faciat? Doth our law judge any man, before it hear him and know what he doth? [b] It is not the manner of the Romans to deliver any man to die, before that he which is accused have the accusers face to face, and have licence to answer for himselfe concerning the crime laid against him.

[c] Ait Josua ad Acab, Fili mi, da gloriam domino Deo Israel, & confitere mihi quid feceris, ne abscondas.

[d] Interrogatus Levita maritus mulieris interfectæ quomodo tantum scelus perpetratum esset, &c. And the conclusion is after hearing and discerning the cause, Consider, consult, and then give sentence.

[e] And as evill was the proceeding in Parliament against Sir John Mortimer, third son of Edmond the second Earl of March (descended from Lionell Duke of Clarence) who was indicted of high Treason for certain words, in effect, that Edmond Earl of March should be King by right of inheritance, and that he himselfe was next rightfull heir to the Crown after the said Earl of March, wherefore if the said Earl would not take it upon him, he would: and that he would goe into Wales, and raise an Army of 20000. men, &c. which indictment (without any arraignment or pleading) being meerly faigned to blemish the title of the Mortimers, and withall being insufficient in law as by the same appeareth, was confirmed by Authority of Parliament: [e] the said Sir John being brought into the Parliament without arraignment or answer, judgement in Parliament was given against him upon the said indictment, That he should be carried to the Tower of London, and drawn through the City to Tiborn, and there hanged, drawn and quartered, his head to be set on London bridge, and his four quarters on the four gates of London, as by the Record of Parliament appeareth.

[a] Lex Divina. Iohn 7. v. 15. Deut. c. 17. v. 10. & ca. 19. v. 15. Mat. Par. 18 Iohannis 273. *Incivile videtur & contra Canones esse in hominem absentem non vocatum, non convictum nec confessum, ferre sententiam.* Hereof see *paulo postea.*

[b] Acts 25. 16. Gen. 3. 9. Dixit dominus, Adam ubi es. Vide Gen. 18. 21. Ecclesiasticus 11. 7, 8.

[c] Praxis Sanctorū Iosua, 7. 19. 22, 23. &c.

[d] Iud. 20. 3.

[e] Rot. Parl. 2. H. 6 nu. 18.

The proceeding in Parliament against Absents.

The ancient law and custome of the Parliament was, that when any man was to be charged in Parliament with any crime or offence, or misdemeanour, the Kings writ was directed to the Sheriff to summon and injoyn the party to appear before the King in the next Parliament. For example.

Placita in Parliamento domini Regis, Anno E. 1. 33. Northampt.

Dominus Rex mandavit Vic' quod assumptis secum quatuor de discretioribus & legalibus militibus Com' sui in propria persona sua accederet ad Nicholaum de Segrave, & ipsum in præsentia prædictorum militum summon' & ex parte domini regis firmiter ei injungeret quod esset coram domino rege in proximo Parliament' suo apud Westm' in primo adventu domini regis ibidem ad audiendam voluntatem ipsius domini regis super hiis, quæ tunc ibidem proponere intenderet vers. eum, & ad faciendum & recipiendum ulterius quod curia domini regis consideraret in præmissis. Et Vic' modo mandavit quod assumptis secum Thoma Wale, Waltero filio Roberti

de

de Daventry, Roberto de Gray de Wollaſton, & Radulpho de Normavill quatuor milit', &c in propria perſona ſua acceſſit apud Stowe ad manerium prædicti Nicholai, & in præſentia eorundum militum ſummon' prædictum Nicholaum, & ei firmiter injunxit quod eſſet coram domino rege in iſto Parliamento nunc juxta formam & tenorem mandati prad', &c

Almaricus de Sancto Amando, Magiſter Johannes de Sancto Amando, Willielmus de monte acuto, Richardus Atteham conſtabularius caſtri Oxon' Ricus de Hurle, Thomas de Carleton capellanus, Johannes de Ros, Johannes de Trenbrigg, Willielmus Attewarde frater ejus, & Philippus de Wigenton attachiat' fuerunt per Vic' in caſtro Oxon' per præcept' domini regis reſponſur' eidem domino regi in Parliamento ſuo in Craſtino Sancti Mathei Apoſtoli Anno regni ſui xxxiij. *ſuper quibuſdam criminibus & tranſgreſſionibus infra ſcriptis, & inde per manucaptionem ſufficient' adjornat' coram ipſo domino rege hic ad hunc diem, ſcilicet a die Paſchæ in* xv. *dies, &c.*

Placita coram domino rege, Paſ. 22 E. 1. Rot. 19. Oxon.

Now a writ might be directed to the party himſelfe, when any complaint was made againſt him. De injuriis, gravaminibus, aut moleſtationibus, **to appear in his proper perſon before the King and his Councell. As for example:**

Dominus Rex mandavit breve ſuum Roberto de Burgherſh in hac verba. Edwardus Dei gratia, &c. Dilecto & fideli ſuo Roberto de Burgherſh conſtabular' caſtri ſui Dover & cuſtod' ſuo quinque portuum, Salutem. Quia dilectus nobis in Chriſto Abbas de Faveresham & Robertus de Gurne balivus ſuus ejuſdem villæ coram concilio noſtro apud Eborum exiſtente de diverſis injuriis, gravaminibus & moleſtationibus eis per vos voluntar' & abſq; cauſa rationibili multipliciter illatis graves querimonias depoſuerunt, petentes inſtanter ut eis ſuper hoc fieri faceremus remedium opportunum: propter quod dedimus eis diem coram nobis & concilio noſtro a die Paſch. in xv. *dies, &c. ad querelas ſuas prædictas tunc oſtendend', & ad faciend' ſuper hoc ulterius & recipiend' quod Juſtitia ſuaderet: Vobis mandamus, quod in propria perſona veſtra ſitis coram nobis et concilio noſtro ad diem prædict' præfatis Abbati & balivis ſuis ſuper præmiſſis reſpons' facitur' & receptur' quod curia noſtra conſideraverit in hac parte, & ab injuriis, gravaminibus, moleſtationibus & diſtrictionibus indebitis præfatis Abbati & balivis ſuis interim inferendis penitus deſiſtendo. Et habeatis ibi hoc breve. Teſte me ipſo apud Linliſcum* xxx. *die Januarii, Anno regni noſtri* xxx. *Virtute cujus brevis prædictus Robertus venit, & breve illud protulit ad diem in eodem contentum. Et prædictus Abbas venit & querelas ſuas protulit in quodam rotulo ſcriptas, & quas in curia hic querelando oſtendit & legere fecit, de quibus prima eſt hac, &c.*

Placita coram Rege apud Cantuar' de Termino Paſc. Anno regni regis E. 130. Conſimile breve ubi ſupra eidem Roberto de Burgherſh ad ſectam Majoris & Baronum quinque portuum.

Now they which abſent themſelves ſhall be proceeded withall, Vide 50 E. 3. nu. 37. Adam Buries caſe, 2. parte Patenc. 21 R. 2. nu. 15, 16. Rot. Par. 17 R. 2. nu. 28, 11 H. 4. nu. 37, 38. 15 H. 6. nu. 4. 33 H. 6. fo. 17. **Sir John Pilkingtons caſe.**

And where by order of law a man cannot be attainted of high treaſon, unleſſe the offence be in law high treaſon, he ought not to be attainted by generall words of high treaſon by Authority of Parliament (as ſometime hath been uſed) but the high treaſon ought to be ſpecially expreſſed, ſeeing that the Court of Parliament is the higheſt and moſt honourable Court of Juſtice, and ought (as hath been ſaid) give example to inferiour Courts.

25 H. 8. ca. 1, 2. Eliz. Barton, and others. And ſee the Act of the Attainder of the Lord Cromwell, Anno 32 H. 8. ubi ſupra.

There was an Act of Parliament made in the 11 year of King H. 7. which had a fair flattering preamble, pretending to avoid divers miſchiefs, which were, 1. To the high diſpleaſure of Almighty God. 2. The great let of the

A miſchievous Act with a flattering Preamble in 11 H. 7.

Common law, and 3. The great let of the wealth of this land: And the Purview of that Act tended in the execution contrary, ex diametro, viz. to the high displeasure of Almighty God, the great let, nay the utter subversion of the Common law, and the great let of the wealth of this land, as hereafter shall manifestly appear. Which Act followeth in these words:

11 H.7.c.3. THe King our Soveraign Lord calling to his remembrance that many good Statutes and Ordinances be made for the punishment of riots, unlawfull assemblies, reteinders in giving and receiving of liveries, signs and tokens unlawfully, extortions, maintenances, imbracery, excessive taking of wages contrary to the Statute of Labourers and Artificers, the use of unlawfull games, inordinate Apparell, and many other great enormities and offences, which been committed and done daily contrary to the good statutes, for many and divers behoofull considerations severally made and ordained, to the displeasure of Almighty God, and the great let of the Common law, and wealth of this land, notwithstanding that generally by the Justices of the Peace in every shire within this Realm in the open Sessions is given in charge to enquire of many offences committed contrary to divers of the said Statutes, and divers enquests thereupon there straitly sworn, and charged before the said Justices to enquire of the premisses, and therein to present the troth which any letted to be found by imbracery, maintenance, corruption and favour, by occasion whereof the said Statutes be not, nor cannot be put in due execution: For reformation whereof, for so much that before this time the said offences, extortions, contempts, and other the premisses might not, nor as yet may be conveniently punished by the due order of the law, except it were first found and presented by the verdict of twelve men thereto duly sworn, which for the causes afore rehearsed will not find nor yet present the truth: wherefore be it by the advice and assent of the Lords Spirituall and Temporall, and the Commons in this present Parliament assembled, and by authority of the same enacted, ordained and established, that from henceforth as well the Justices of Assise in the open Sessions to be holden afore them, as the Justices of Peace in every County of the said Realm, [a] upon information for the King before them to be made, have full power and authority [b] by their discretion to heare and determine all offences and contempts committed and done by any person or persons against the form, Ordinance and effect of [c] any statute made and not repealed, and that the said Justices upon the said information have full power and authority to award and make like processe against the said offenders and every of them, as they should or might make against such person or persons as been present and indicted before them of trespasse done contrary to the Kings peace, and the said offender, or offenders duly to punish according to the purport, form, and effect of the said Statutes. Also be it enacted by the said authority, that the person which shall give the said information for the King shall by the discretion of the said Justices content and pay to the said person or persons against whom the said information shall be so given his reasonable costs and damages in that behalfe sustained, if that it be tried or found against him, that so giveth or maketh any

[a] Upon information without any indictment.

[b] By their discretion, and not *secundum legem & consuetudinem Angl.* as all proceedings ought to be.

[c] Obsolete statutes and all, and specially such as time had so altered from the originall cause of the making thereof, as either they could not at all, or very hardly be observed and kept.

any ſuch information. Provided alwayes, that any ſuch information extend not to treaſon, murder, or felony, nor to any other offence, wherefore any perſon ſhall loſe life, or member, nor to loſe by nor upon the ſame information any lands, tenements, goods or chattels to the party making the ſame information. Provided alſo that the ſaid informations ſhall not extend to any perſon dwelling in any other ſhire, then there, as the ſaid information ſhall be given or made, ſaving to every perſon and perſons, cities, and towns, all their liberties and franchiſes to them and every of them of right belonging and appertaining.

But it extended to a Premunire, miſpriſion of treaſon, &c.

By pretext of this law Empſon and Dudley did commit upon the Subject unſufferable preſſures and oppreſſions, and therefore this ſtatute was juſtly ſoon after the deceaſe of H. 7. repealed at the next Parliament after his deceaſe, by the ſtatute of 1 H. 8. ca. 6.

1 H. 8. ca. 6.

A good caveat to Parliaments to leave all cauſes to be meaſured by the golden and ſtreight metwand of the law, and not to the incertain and crooked cord of diſcretion.

It is not almoſt credible to foreſee, when any ſtatute, or Fundamentall law of this Realm is altered (as elſewhere hath been obſerved) what dangerous inconveniences doe follow, which moſt expreſly appeareth by this moſt unjuſt and ſtrange Act of 11 H. 7. for hereby not only Empſon and Dudley themſelves, but ſuch Juſtices of Peace (corrupt men) as they cauſed to be authorized, committed moſt grievous and heavy oppreſſions and exactions, grinding of the face of the poore Subjects by penall laws (be they never ſo obſolete or unfit for the time) by information only without any preſentment or triall by Jury being the antient birthright of the Subject, but to heare and determine the ſame by their diſcretion, inflicting ſuch penalty, as the ſtatutes not repealed impoſed: Theſe and other like oppreſſions and exactions by or by the meanes of Empſon and Dudley and their inſtruments, brought infinite treaſures to the Kings Coffers, whereof the King himſelfe in the end with great griefe and compunction repented, as in * another place we have obſerved.

See the Chapter of the Court of Wards and Liveries.

This ſtatute of 11 H. 7. we have recited, and ſhewed the juſt inconveniences thereof, to the end, that the like ſhould never hereafter be attempted in any Court of Parliament. And that others might avoid the fearfull end of thoſe two time-ſervers, Empſon and Dudley. Qui eorum veſtigia inſiſtunt, eorum exitus perhorreſcant.

See the ſtatute of 8 E. 4. ca. 2. the Statute of Liveries, an Information, &c. by the diſcretion of the Judges to ſtand as an originall, &c. This Act is deſervedly repealed.

Vide 12 R. 2. cap. 13. Puniſhment by diſcretion, &c. Vide 5 H. 4. ca. 6. 8. See the * Commiſſion of Sewers. Diſcretion ought to be thus deſcribed. Diſcretio eſt diſcernere per legem quid ſit juſtum. And this deſcription is proved by the Common law of the land, for when a Jury doe doubt of the law, and deſire to doe that which is juſt, they find the ſpeciall matter, and the entry is, Et ſuper tota materia, &c. petunt diſcretionem Juſticiariorum, and ſometime, adviſamentum & diſcretionem Juſticiariorum in præmiſſis, &c. that is, they deſire that the Judges would diſcern by law what is juſt, and give judgement accordingly.

* Lib. 5. fo. 100. Rooks caſe. Lib. 10. fo. 128. &c.

Pl. Com. 348. Barnards caſe.

Acts against the power of the Parliament subsequent bind not.

1 H.4.nu.144. 21 R.2.nu.20. repealed by 1 H.4. ca. 3. 1 H.4.nu.48. Vid.7 H.4.nu.37.

An Article of the Statute made in 11 R.2.cap.5. is that no person should attempt to revoke any Ordinance then made, is repealed, for that such restraint is against the jurisdiction and power of the Parliament, the liberty of the subject, and unreasonable. And likewise the last Will and Testament of King R.2. under the Great Seal, Privy Seal, and Privy Signet, whereby he devised certain money, treasure, &c. to his successors upon condition to observe all the Acts and orders at the Parliament holden in Anno 21 of his reign, was holden unjust and unlawfull, for that it restrained the Soveraign liberty of the Kings his Successors.

21 R.2.ca.16. 21 R.2.nu.44.

Sundry Lords of Parliament (but no Bishops) or six of them, and certain Knights of Shires of the Commons or three of them are authorized by Authority of Parliament to examine, answer and plainly determine all the Petitions exhibited in that Parliament, and the matters contained in the same by their good advice and discretion, &c. The high power of a Parliament to be committed to a few is holden to be against the dignity of a Parliament, and that no such Commission ought to be granted.

1 H.4.nu.6.

2 H.4.ca.21. Vide 21 R.2. nu.44.

An Act in 11 R.2. ca. 3. that no man against whom any judgment, or forfeture was given should sue for pardon or grace, &c. was holden to be unreasonable without example, and against the law and custome of Parliament, and therefore that branch by Authority of Parliament was annichaled, and made void.

26 H.8.ca.1. Acts of Parliament ought to be plainly, and clearly, and not cunningly and darkly penned, specially in criminall causes.

Also I find that in times past the Houses of Parliament have not been clearly dealt withall, but by cunning artifice of words utterly deceived, and that in cases of greatest moment, even in case of High Treason, as taking one example for a warning in like cases hereafter.

King H.8. after the Clergy of England had in their Convocations acknowledged him Supream Head of the Church of England, thought it no difficult matter to have the same corroborated and confirmed by Authority of Parliament, but withall secretly, and earnestly desires that the impugners and deniers thereof, though it were but by word, might incur the offence of High Treason, and finding the one, that is, the acknowledgement of his Supremacy likely to have good passage, and having little hope upon that which he found to effect the other concerning High Treason, sought to have it passe in some other Act by words closely touched, though the former Act of Supremacy had been the proper place.* And therefore in the Act of recognition of his Supremacy it is enacted, that he should have annexed and united to the Crowne of this Realm the Title and Stile thereof: * and afterwards towards the end of the Parliament, a bill was preferred whereby many offences be High Treason, and thereby it is enacted, That if any person or persons by [a] word or writing, 1 practise or attempt any bodily harm to the King, the [b] Queen or their heirs apparant, 2 or to [c] deprive them or any of them, of their dignity, [d] title, or name of their royall estates, 3 or that the King should be an [e] Heretique, Schismatique, Tyrant, Infidell or Usurper of the Crown, &c. that every such persons so offending should be adjudged Traytors, &c. So as now by this latter Act, he that by word or writing attempts to deprive the King of the title of his royall estate is a Traytor, but the former Act had annexed to the Crown the title of the title of Supremacy, and therefore he that should by word or writing attempt to deprive the King thereof should be a Traytor. And [f] upon this law of 26 H.8.ca. 13. for denying of the Kings Supremacy divers suffered death as in case of High Treason, whereas all laws, especially penall, and principally those that are penall in the highest degree [g] ought to be so plainly and perspicuously penned, as every Member of both Houses may understand the same, and according to his knowledge and conscience give his voice. [h] Erit autem lex honesta, justa, possibilis, secundum naturam & secundum consuetudinem patriæ, temporique conveniens, necessaria & utilis, manifesta quoque, ne aliquid per obscuritatem incautum captione

* 26 H.8.ca.1.
* 26 H.8.ca.13.
[a] By word, &c. this by construction referres to the 2. clause.
[b] Shadowed with the Queen or Prince.
[c] Deprive, an obscure word.
[d] Note this word [title] in the former Act.
[e] Parker B. of Cant. *Lib. de Antiquitate Brit. Ecclesiæ. Clerus animo toto obstupuit, nondum enim quid sibi hic novus vellet titulus, aut quorsum tenderet, prospexit, &c.*
[f] But this Act lived not long, for twice it was repealed, viz. by 1 E. 6. c.12. & 1 Mar.c.1.
[g] What qualities laws ought to have.
[h] Isidor.2 Etymol.

tione contrudat, nullo privato commodo, ſed pro communi civium utilitate conſcripta, ideo in ipſa conſtitutione iſta conſideranda ſunt, quia cùm leges inſtitutæ fuerint non erit liberum arbitrium judicare de ipſis, ſed oportebit judicare ſecundum ipſas, **which be excellent rules for all Parliaments to follow. But the Statute of** 5 Eliz. ca. 1. **hath concerning the Supremacy dealt plainly and perſpicuouſly as by the ſame appeareth.**

5 Eliz. ca. 1.

* Exod. 4. 16. *Tu* i. *Moſes eris ei.*

Aaron, in his quæ ad deum pertinent, &c. Exod. 32. 15, 16. *Moſes cuſtos utriuſque tabulæ.* Numb. 10. 1, 2. *Moſes Cuſtos utriuſque tubæ.* Joſhua 24 1. *Congregavit Joſua, &c.* 28. *dimiſit.* 1 Chron. 15. 4. 1 Chron. 16. 43. Rex David. 2 Chron. c. 2. Rex Solomon. 2 Chron. 29. 15. &c. Ezekias. Nota. 1 Sam. 15. 17. *Et ait Samuel ad Saul, nonne cum parvulus eſſes caput in tribubus factus es?* and the Tribe of Levi was one. 1 Maccab. 14. 41. See hereafter ca. 74.

And albeit it appeareth by theſe examples, and many other that might be brought, what tranſcendent power and authority this Court of Parliament hath, yet though divers Parliaments have attempted to barre, reſtrain, ſuſpend, qualifie, or make void ſubſequent Parliaments, yet could they never effect it, for the latter Parliament hath ever power to abrogate, ſuſpend, qualifie, explain, or make void the former in the whole or in any part thereof, notwithſtanding any words of reſtraint, prohibition, or penalty in the former: for it is a maxime in the law of the Parliament, quod leges poſteriores priores contrarias abrogant.

Subſequent Parliaments cannot be reſtrained by the former.

43 E. 3. ca. 1.
11 H. 7. ca. 1.
28 H. 8. ca. 17.
1 E. 6 ca. 11.
Lib. 4. fo. 46. the B. of Cant. caſe.

Acts of Parliament enrolled in other Courts.

For the better obſervation of any Act of Parliament enacted for the Commonwealth, or of a Petition of right, or Judgement in Parliament, or the like, and to incourage the Judges that the ſame may be duly executed, the ſame may be inrolled in the Courts of Juſtice in this manner. The tenor of the Record muſt be removed into the Chancery by writ of Certiorari, **and delivered into the Kings Bench by the hands of the Chancelor or Lord Keeper, and ſent by** Mittimus **to the Court of Common pleas, and by like** Mittimus **into the Exchequer, and the King by his writ may command any Court to obſerve and firmly to keep ſuch an Act of Parliament, as it appeareth by theſe two precedents.** *Ex Rotulo Clauſ. Anno* 28 *E.* 1. *m.* 2. *Dorſ.* Rex Theſaurar & Baronibus ſuis de Scaccar Salutem. Quia volumus quod Magna Carta domini Henrici quondam Regis Angliæ patris noſtri de libertatibus Angliæ quam confirmavimus & etiam innovavimus in omnibus & ſingulis articulis ſuis firmiter & inviolabiliter obſervetur. Vobis mandamus quod Cartam prædictam in omnibus & ſingulis ſuis articulis quantum in vobis eſt coram vobis in dicto Scaccario obſervari faciatis firmiter & teneri. T. R. apud Dunſtres 23. die Octobris.

Int. Placita Parl. 18 E. 1. Rot. 18. Ibid. 20 E. 1. Magnum Placitū int. Com. Gloc' & Com. Heref. & Eſſex irr. Rot. Clauſ. An. 28 E. 1. in Dorſ. irr. le Magna Carta. Paſch. 33 E. 1. Rot. Par. Nich. Segraves caſe, Rot. 22. Tr. 12 E. 2. Ro. 69. *de* irr. Petition in Parliament, *al banche le Roy.*

Rex Juſtic' ſuis de Banco Salutem: Cum in alleviationem gravaminum quæ populus regni noſtri occaſione guerrarum hactenus toleravit, ac in emendationem ſtatus ejuſdem populi, nec non ut ex hoc ſe exhibeat ad noſtra ſervicia promptiorem, nobiſque in agendis noſtris libentius ſubſidium faciat in futurum, quoſdam articulos eidem populo plurimum (annuente Domino) profuturos de gratia noſtra ſpeciali duxerimus concedendos. Vobis mandamus quod dictos articulos quos vobis mittimus ſigillo noſtro conſignatos coram vobis in banco prædicto quantum in vobis eſt juxta vim, formam & effectum eorundem obſervari faciatis firmiter & teneri. T. R. apud Dunſtres 30. die Octobris.

Every Member of the the Parliament ought to come.

Every Lord Spirituall and Temporall, and every Knight, Citizen and Burgeſſe ſhall upon Summons come to the Parliament, except he can reaſonably, and honeſtly excuſe himſelfe, or elſe he ſhall be amerced, &c. that is, reſpectively, a Lord by the Lords, and one of the Commons by the Commons.

5 R. 2. Stat. 2. c. 4. Rot. Par. 31 H. 6. nu. 46. fines were ſet, &c.

By the Statute of 6 H. 8. ca. 16. **no Knight, Citizen or Burgeſſe of the Houſe of Commons ſhall depart from the Parliament without licence of the Speaker and Commons, the ſame to be entred of record in the book of the Clerk of the Parliament, upon pain to loſe their wages.**

If any of the Lords or Commons come not, &c. they ſhall be fined.

Vi. 3 E. 18. ſup. If any of the Lords or Commons depart, &c. they ſhal be fined 1 & Ph. & M. Rot. 48. ut ſup.

If a Lord depart from Parliament without licence, it is an offence done out of the Parliament, and is finable by the Lords: and ſo it is of a Member of the Houſe of Commons, he may be fined by the Houſe of Commons. Vide 1 & 2 Ph. & Mar. coram rege. Rot. 48. divers informations by the Attorny Generall for departing without licence, ut ſupra.

* 5 R. 2 ſtat. 2. ca. 4.

* The puniſhment of Sheriffes for their negligence in returning of Writs, or for leaving out of their returns any City or Borough which ought to ſend Citizens and Burgeſſes.

Advice concerning new and plauſible projects and offers in Parliament.

See before pa. 14. Rot. Par. 13 E. 3.

When any plauſible project is made in Parliament to draw the Lords and Commons to aſſent to any Act (eſpecially in matters of weight and importance) if both Houſes do give upon the matter projected and promiſed their conſent, it ſhall be moſt neceſſary, they being truſted for the Common-wealth, to have the matter projected and promiſed (which moved the Houſes to conſent) to be eſtabliſhed in the ſame Act, leſt the benefit of the Act be taken, and the matter projected and promiſed never performed, and ſo the Houſes of Parliament performe not the truſt repoſed in them. As it fell out (taking one example for many) in the reign of H. 8. On the Kings behalfe the Members of both Houſes were informed in Parliament, that no King nor Kingdome was ſafe, but where the King had three abilities. Firſt, To live of his own, and able to defend his Kingdome upon any ſudden invaſion or inſurrection. 2. To aid his confederats, otherwiſe they would never aſſiſt him. 3. To reward his well deſerving ſervants. Now the project was, that if the Parliament would give unto him all the Abbies, Priories, Friories, Nunneries, and other Monaſteries, that for ever in time then to come, he would take order that the ſame ſhould not be converted to private uſe: But firſt, that his Exchequer for the purpoſes aforeſaid ſhould be enriched. Secondly, the Kingdome ſtrengthened by a continuall maintenance of 40 thouſand well trained ſouldiers with skilfull Captains and Commanders. Thirdly, for the benefit and eaſe of the Subject, who never afterwards (as was projected) in any time to come ſhould be charged with Subſidies, Fifteenths, Loanes, or other common aides. Fourthly, leſt the honour of the Realme ſhould receive any diminution of honour by the diſſolution of the ſaid Monaſteries, there being 29 Lords of Parliament of the Abbots and Priors (that held of the King per Baroniam, whereof more in the nert leafe) that the King would create a number of Nobles, which we omit. The ſaid Monaſteries were given to the King by authority of divers Acts of Parliament, but no proviſion was therein made for the ſaid project, or any part thereof; * only ad faciend' populum theſe poſſeſſions were given to the King his heirs and ſucceſſors to do and uſe therewith his and their own wills, to the pleaſure of Almighty God, and the honour and profit of the Realme.

27 H. 8. de monaſteries, & 31 H. 8. cap. 13. 32 H. 8. cap. 14.

* 27 H. 8. cap. 28.

Now obſerve the Cataſtrophe; in the ſame Parliament of 32 H. 8. when the great and opulent Priory of Saint Johns of Jeruſalem was given to the King, he demanded and had a Subſidie both of the Clergie and Laity. And the like he had in 34 H. 8. and in 37 H. 8. he had another Subſidie. And ſince the diſſolution of the ſaid Monaſteries he exacted divers loanes, and againſt law received the ſame.

32 H. 8. ca. 23. 50. 34 H. 8. cap. 16. & 27. 37 H. 8. cap. 24.

Whom the King may call to the Lords Houſe of Parliament.

Rot. Clauſ. in dorſ. 10 H. 7. 20 Septemb. Writs to divers *ad ordinem militiæ de Balneo ſuſcipiend' juxta antiquam conſuetudinem in creatione uſitatam.*

If the King by his Writ calleth any Knight or Eſquire to be a Lord of the Parliament, he cannot refuſe to ſerve the King there in communi illo Concilio, for the good of his country. But if the King had called an * Abbot, Prior, or other regular Prelate by Writ to the Parliament to the Common Councell of the Realme, if he held not of the King per Baroniam, he might refuſe to ſerve in

* Of regular Prelats that hold *per Baroniam.*

Parliament

Parliament, becauſe quoad ſecularia, he was mortuus in lege, and therefore not capable to have place and voice in Parliament, unleſſe he did hold per Baroniam, and were to that Common Councell called by Writ, which made him capable: and though ſuch a Prelat Regular had been often called by Writ, and had de facto had place & voice in Parliament, yet if in rei veritate he held not per Baroniam, he ought to be diſcharged of that ſervice, and to ſit in Parliament no more.

And ſo it was adjudged in the Parliament at York, An. 12 E.2. in the caſe of the Abbot of *S. Iames* extra Northamp. Stanf. pl. cor. 153.2.

[a] For that the Abby of Leiceſter was founded by Robert Fitz-Robert Earle of Leiceſter (albeit the patronage came to the Crowne by the forfeiture of Simon de Mountford Earle of Leic.) yet being of a ſubjects foundation, it could not be holden per Baroniam, and therefore the Abbot had no capacity to be called to the Parliament, and therepon the King did grant, quod idem Abbas & ſucceſſores ſui de veniendo ad Parliamenta & concilia noſtra vel hæredum noſtrorum quieti ſint & exonerati imperpetuum.

[a] Rot par. An. 26. E.3. part.1.m.22. See Rot.clau. in dorſ. 11 E.3. part.2.m.21.

[b] De jure & conſuetudine Angliæ ad Archidiaconatum Cantuarienſem, &c. Abbates, Priores, alioſq; Prælatos quoſcunque per Baroniam de domino Rege tenentes pertinet in Parliamentis regiis quibuſcunque ut Pares regni prædicti perſonaliter intereſſe, ibiq; de regni negotiis ac aliis tractari conſuetis cum cæteris dicti regni Paribus ac aliis ibidem jus intereſſendi habentibus conſulere & tractare, ordinare, ſtatuere, & diffinire, ac cætera facere quæ Parliamenti tempore ibid. immunient faciend.

Religious que teignent per Barony ſont tenus de venir au Parliament. Vid.ibid. 13 E.3. part.2.m.28. & 1.

[b] Rot.pat. 11 R.2. part.1.m.2. Artic.34.

No man ought to ſit in that High Court of Parliament, but he that hath right to ſit there: for it is not onely a perſonall offence in him that ſitteth there without authority, but a publique offence to the Court of Parliament, and conſequently to the whole Realme. But all the caſes aboveſaid, and others that might be remembred touching this point, as little Rivers do flow from the fountaine of Modus tenendi Parliamentum, where it is ſaid; Ad Parliamentum ſummoneri & venire debent ratione tenuræ ſuæ omnes & ſingulæ Archiepiſc', Epiſcopi, Abbates, Priores, & alii majores cleri qui tenent per comitatum vel baroniam ratione hujuſmodi tenuræ, & nulli minores, niſi eorum præſentia neceſſaria vel utilis reputetur, &c.

Modus tenendi Parl.ca.2. This is *infra* explained by the Aſſiſe of Clarendon.

One rare and ſtrange creation of a Lord regular of Parliament we cannot paſſe over, which was, That King H.8. in the fifth yeat of his reign, by his Letters Patents under the Great Seale, did grant unto Richard Banham Abbot of Tavelſtock in the County of Devon, being of his patronage, and to the ſucceſſors of the ſaid Abbot, ut eorum quilibet, qui pro tempore ibidem fuerit Abbas, ſit & erit unus de ſpiritualibus & religioſis dominis Parliamenti noſtri, hæredum & ſucceſſorum noſtrorum, gaudend honore, privilegio & libertatibus ejuſdem.

By that which hath been ſaid, it appeareth that this creation of a regular Lord of Parliament was voide, for that the Abbot was neither Baro, nor had Baroniam, &c. And if the King might create Abbots or Priors Lords of Parliament in this manner, by the ſame reaſon he might create Deanes and Archdeacons Lords of Parliament, which without queſtion he cannot.

By the Act of Parliament of 10 H.2. called the Aſſiſe of Clarendon, it is declared, Ut pars conſuetudinum & libertatum anteceſſorum regis, *viz.* Henrici primi & aliorum, quæ obſervari debent in regno & ab omnibus teneri, *viz.* Archiepiſcopi, Epiſcopi, & univerſæ perſonæ regni, qui de rege tenent in capite, habeant poſſeſſiones ſuas de rege ſicut baroniam, & inde reſpondeant Juſticiariis & miniſtris regis, & ſequantur & faciant omnes conſuetudines regias, & ſicut cæteri barones debent intereſſe judiciis Curiæ regis cum baronibus, quouſq; perveniatur * ad diminutionem membrorum vel ad mortem. So as by this Act a tenure of the King in chiefe was in equipage with a Barony.

10 H.2.cap.11. Mat.Par.97 Aſſiſa de Clarendon

Rot.Parl.11 & 21 R.2.

And King John by his great Charter of liberties made Anno 17 of his reigne, granteth, Quod faciemus ſummoneri Archiepiſcopos, Epiſcopos, Abbates, Comites, & Majores Barones regni ſingulatim per literas noſtras. Out of this Clauſe we are to obſerve theſe things: Firſt, that theſe Barons called here Majores, were Lords of Parliament, and called thereunto by the Kings Writs. Secondly, that they were called Majores comparatively, and that was in reſpect

Cart.libertat. à Rege Iohanne Anno 17 regni ſui conceſſ. Mat.Par.343.

of others which were called Barones minores, or Nobiles minores, and were Freeholders that * hold by Knights Service and Efenage. *i.* Servitium Scuti, of three sorts, *viz.* Milites, Armigeri, & Generosi. Knights, Esquires, and Gentlehomes, or Gentlemen. These Barones minores were Lords of Manors, and had not the dignity of Lords, but had Courts of their Freeholders, which to this day are called Court Barons, Curiæ Baroniar'. Of this Baron it is said in that law made by King Edward before the Conquest: Barones qui suam habent * Curiam de suis hominibus, videant ut sic de eis agant, quatenus erga Deum reatum non incurrant, & regem non offendant.

Baro à Bar, Germanica lingua liberum & sui juris significat, 1. which agreeth well with that which hath been said. 2. That Baro major was called Baro major regni. 3. That every greater Baron was severally summoned by the Kings Writ, which continueth to this day.

* Nota, a Knights fee is the service of a Knight, that is of a man at Arms, or of war. Hereof see the second part of the Instit. cap. de Militibus. 1 E. 2. Inter leges Edw. cap. 21. lib. ca. 9.

* 1 Curiam Baronis Glany. li. 8. cap. 11. acc' Bract. li. 3. 154. b. Camd. Brit. 121.

The fees of the Knights, Citizens, and Burgesses of Parliament.

First, for the Knight of any County it is 4.s. per diem, and so it hath beene time out of mind, which is particularly expressed in many Records, but let us take one. in hæc verba. Johannes Shordich unus militum comitatus Middlesex venientium ad Parliamentum tent' apud Westm̃ in Cro. Animarum ultim̃ præterit' habet allocationem 4. li. & 4.s. pro 21 diebus pro expensis suis veniendo ad Parliament' prædict' ibid. morando, & exinde ad propria redeundo, capiendo per diem 4.s. Teste Rege apud Westm̃ 24 die Novemb. Anno 46. Every Citizen and Burgesse is to have 2.s. per diem, ut supra, mutatis mutandis.

Indors. Claus. An. 46 E. 3. nu. 4. Rot. Claus. 7 R. 2. nu. 1. de expensis milit. Regist. fo. 192. 2. acc'. *Dieta. Veniendo, Morando, Redeundo, per diem* 4.s. Par. 51 E. 3. nu. 45 35 H. 8. cap. 1 See the ancient Treatise, *De modo tenendi Parl.*

[a] Nota the Writ De expensis militum, &c. doth comprehend the summe according to the abovesaid computation, and a commandement to the Sheriffe to levy the same [b] De communitate comitatus prædict' tam infra libertates, quam extra, (Civitatibus & Burgis de quibus cives & burgenses ad Parliamentum nostrum, &c. venerunt duntaxat exceptis.) The like Writs to the Sheriffes De expensis civium & Burgensium, to levy the same in Cities and Boroughs.

[a] Regist. f. 192. 2. See the stat. of 12 R. 2. ca. 12. & see 23 H. 6. ca. 11. how the Sheriffe shall levy the same.

[c] An. 1 R. 2. nu. 11. the Commons petitioned in Parliament, that all persons having Lay fee might contribute to the charge of the Knights, and to all tallages. The King answered [The Lords of the Realm will not lose their old liberties.] Note the Writ is De communitate.

See 8 R. 2. tit. Avowrie 160. what the Common law was.

[b] Nota de communitate. Vid. sup. pa. 1. For the legall understanding of this word Commons.

[d] Also there is a Writ in the register De expensis militis non levandis ab hominibus de antiquo dñico, nec ab nativis. [e] Other discharges De expensis militum.

[e] Rot. Par. 1 R. 2. nu. 11.

[d] Regist. 161. 7 H. 6. 35. b. F. N. B. 14 E.

[f] For the wages of the Knights of the Shire of Cambridge see the statute of 34 H. 8. cap. 24. Consimile pro Insula de Ely, &c.

[e] Regist. 191, 192. 12 R. 2. ca. 12.

[f] 34 H. 8. ca. 24. 9 H. 6. nu. 46.

[g] H. 4. An. 14. of his reigne summoned a Parliament Cro Purificationis, and he deceased 20 Martii following, so as the Parliament was dissolved by his decease. Thereupon it was a question, whether the Knights and Burgesses should have their wages, seeing nothing passed in that Parliament. And it was resolved, that if upon view of the Kings [h] Records any like presidents may be found, allowances of their fees shall be made. [i] Also the Clergy were contributory by reason of their Benefices to the expences of the procurators of the Clergy.

[g] Rot. Par. 1 H. 5. nu. 26. [h] Nota, for presidents. [i] Regist. 261, F. N. B. 229. 2.

[k] But Chaplains which are Masters of the Chancery and attendants at the Parliament, shall not be contributory by reason of their Benefices to the expences of the Clergy, as by the Register ubi supra appears: and this was by an Act of Parliament made in * 4 E. 3. which in generall words is recited in the Writ directed to the Arch-deacon for their discharge.

[k] Vid. supra pa. 4, 5. * Parl. An. 4 E. 3. apud Winton. whereof there is no Roll now remaining.

Who be eligible to be a Knight, Citizen, or Burgesse of Parliament.

A Knight Baneret being no Lord of Parliament is eligible to be Knight, Citizen, or Burgesse of the House of Commons being under the degree of a Baron, who is of the lowest degree of the Lords House. But Thomas Camois was not onely

See the stat. of 5 R. 2. cap. 4. Vid. sup. pa. 4, 5. Rot. brev. 7 R. 2.

onely a Knight Baneret, but a Baron and Lord of Parliament in Anno 7 R 2. and ſerved in that Parliament as a Baron of the Realme, and therefore as of a thing notorious he was diſcharged. One under the age of 21 yeares is not eligible, neither can any Lord of Parliament ſit there untill he be of the full age of 21 yeares. Dorſ clauſ. 7 R. 2. m. 10. & 37.

An Alien cannot be elected of the Parliament, becauſe he is not the Kings liege ſubject, and ſo it is albeit he be made Denizen by Letters Patents, &c. for thereby he is made quaſi, ſeu tanquam ligeus; but that will not ſerve, for he muſt be ligeus revera, and not quaſi, &c. And we have had ſuch an one choſen and diſallowed by the Houſe of Commons, becauſe ſuch a perſon can hold no place of judicature: but if an Alien be naturalized by Parliament, then he is eligible to this or any other place of judicature. Viſtat. de 1 Mar. cap.

But it is objected that Gilbert de Umphrevill Earle of Angos in Scotland, was called by the Kings Writ to the Parliament in 39 E. 3. by the name of Gilbert Earle of Angos: and in a Writ of Raviſhment of Ward brought againſt him, by the name of Gilbert Umphrevill Chivaler, he pleaded to the Writ that he was Earle of Angos not named in the Writ: and for that he was ſummoned to every Parliament by the name of the Earle of Angos, and the King ſent to him a Writ of Parliament under the Great Seale, as to a Peer of the land: by judgement of the Court the Writ did abate. We have ſearched for the truth of this caſe, and doe finde it in the Plea Rols in this manner. 39 E. 3. 35, 36.

Richard de Umphrevill Baron of Prodhowe and Redesdale in the County of Northumberland, had iſſue Gilbert, who after the deceaſe of his Father was a Baron of this Realme, and in the reign of H. 3. married with Mawde daughter and heir of the Earl of Angos in Scotland, who by her had iſſue Gilbert, who was Earle of Angos as heir to his mother, and Baron of Prodhow and Redeſdale as heir to his father: he ſat in Parliament upon ſummons by Writ in 27 E. 1. 28 E. 1. 30 E. 1. 35 E. 1. 1 E. 2. and 2 E. 2. by the name of Gilbert Earle of Angos. Robert his ſonne ſat in Parliament, Anno 12 E. 2. by the ſame name of dignity, and ſo forth, all E. the Seconds reign. And Gilbert his ſonne ſat in Parliament in 6 E. 3. and in every Parliament following untill, and in 4 R. 2. by the ſame name. And in Gilbert his ſonne (who deceaſed in Anno 15 H. 6.) that ſirname of Umphrevill ceaſed. Hereby it appeareth that the ſaid Richard Umphrevill and his poſterity, from whence ſoever they originally deſcended, were liege Engliſhmen: for if they had been Aliens, they could not have enjoyed the Lordſhips of Prodhowe, Otterborne, Hartbottle, and Redesdale in England, nor the Barony of Kime in Lancaſhire, which the two laſt Gilberts enjoyed. And note, the Booke in 39 E. 3. concludeth, that Gilbert Umphrevill was ſummoned to the Parliament under the Great Seale, Come un Pier del Realme. All this doth appeare in the Rols of Parliament in all the ſeverall times. Theſe two were commonly called the Earles of Kime.

A Biſhop elect may ſit in Parliament as a Lord thereof. Hil. 18 E. 1. fo. 5. nu. 10.

Of Knights, Citizens and Burgeſſes of Parliament.

None of the Judges of the Kings Bench, or Common Pleas, or Barons of the Exchequer that have judiciall places can be choſen Knight, Citizen or Burgeſſe of Parliament, as it is now holden, becauſe they be aſſiſtants in the Lords Houſe; and yet you may read in the * Parliament Roll, An. 31 H. 6. that Thorp Baron of the Exchequer was Speaker of the Parliament. But any that have judiciall places in the Court of Wards, Court of Dutchy, or other Courts Eccleſiaſticall, or Civill, being no Lord of Parliament are eligible. * Rot. Par. 31 H. 6 nu. 26, 27, 28. Note, he could not be Speaker unleſſe he were Knight of the Shire, &c. in the book of Burgeſſes of the Houſe of Commons.

[a] None of the Clergy, though he be of the loweſt Order, are eligible to be Knight, Citizen, or Burgeſſe of Parliament, becauſe they are of another body, viz. of the Convocation. [a] Alexan. Nowels caſe, who after was Deane of Pauls being a Prebend. 1 Mar.

A man attainted of treaſon or felony, &c. is not eligible: for concerning the election of two Knights, the words of the Writ be, Duos milites gladiis cinctos magis idoneos, & diſcretos eligi fac. And for the election of Citizens & Burgeſſes,

the words of the Writ be, Duos, &c. de diſcretioribus & magis ſufficientibus, which they cannot be ſaid to be, when they are attainted of treaſon or felony, &c.

Maiors and Bailiffes of Townes Corporate are eligible againſt the opinion in Brook, Anno 38 H.8. tit' Parliament.

Any of the profeſſion of the Common Law, and which is in practiſe of the ſame, is eligible. For he which is eligible of common right cannot be diſabled by the ſaid Ordinance in Parliament in the Lords Houſe in 46 E.3. unleſſe it had been by Act of Parliament: And if it had been by Authority of Parliament, yet had the ſame been abrogated by the ſaid ſtatutes of 5 R.2. ſtat.2. cap.2. and 7 H.4. cap. 15. which are generall lawes without any exception, as hath beene ſaid.

Rot. Par. 46 E.3. nu.10.

5 R.2.ſtat.2.c.3.4. 7 H.4.ca.15.

At a Parliament holden at Coventry Anno 6 H. 4. the Parliament was ſummoned by Writ (and by colour of the ſaid Ordinance) it was forbidden, that no Lawyer ſhould be choſen Knight, Citizen, or Burgeſſe, by reaſon wherof this Parliament was fruitleſſe, and never a good law made thereat, and therefore called Indoctum Parliamentum, or Lack-learning Parliament, And ſeeing theſe Writs were againſt law, Lawyers ever ſince (for the great and good ſervice of the Commonwealth) have been eligible: for, as it hath been ſaid, the Writs of Parliament cannot be altered without an Act of Parliament: and albeit the prohibitory clauſe had been inſerted in the Writ, yet being againſt law, Lawyers were of right eligible, and might have been elected Knight, Citizen, or Burgeſſe in that Parliament of 6 H.4.

Rot. Clauſ. Anno 6 H.4.

See before pa. 10. 4 Petty Acts paſſed at this Parliament of little or no effect, as by the ſame appears. Rot. Parl. 50 E.3. nu.83. on Ordinance that no Sheriffe ſhould be Juſtice of peace, &c. bound not the ſubject untill a ſtatute made 1 Mar.c.8.

By ſpeciall order of the Houſe of Commons the Attorny Generall is not eligible to be a Member of the Houſe of Commons.

At the Parliament holden 1 Caroli Regis, the Sheriffe for the County of Buckingham was choſen Knight for the County of Norff. and returned into the Chancery: and having a Subpœna out of the Chancery ſerved upon him, at the ſuit of the Lady C. pendente Parliamento, upon motion, he had the priviledge of Parliament allowed unto him by the judgement of the whole Houſe of Commons.

Who ſhall be Electors of Knights, Citizens, and Burgeſſes, how and when: and of Elections.

Who ſhall be electors, and who ſhall be choſen, and the time, place, and manner of election, and therein the duty of the Sheriffe, you may read in the poſitive lawes of 7 H.4.cap.15. 11 H.4.cap.1. 1 H.5.cap.1. 8 H.6.cap.7. 10 H.6.cap.2. 23 H.6.cap.15. 6 H.6.cap.4. &c. which need not here to be particularly rehearſed.

5 Eliz.cap.1. No Knight, Citizen or Burgeſſe can ſit in Parliament before he hath taken the Oath of Supremacy.

Vide Rot. Clauſ. 7 R.2. 7 Octobris in Dorſ. Sir Thomas Moreville elected one of the Knights for the County of Hertford, Ibid. James Berners choſen to ſerve in Parliament, and both of them diſcharged. See the Record.

No election can be made of any Knight of the Shire but between 8 and 11 of the clock in the forenoone: but if the election be begun within that time, and cannot be determined within thoſe houres, the election may be made after.

For the election of the Knights, if the party or the Free-holders demand the Poll, the Sheriffe cannot deny the ſcruting, for he cannot diſcerne who be Free-holders by the view: and though the party would waive the Poll, yet the Sheriffe muſt proceed in the ſcruting.

If the King doth newly incorporate an ancient Borough (which ſent Burgeſſes to the Parliament) and granteth that certaine ſelected Burgeſſes ſhall make election of the Burgeſſes of Parliament, where all the Burgeſſes elected before, this Charter taketh not the election of the other Burgeſſes. And ſo, if a City, &c. hath power to make Ordinances, they cannot make an Ordinance that a leſſe number ſhall elect Burgeſſes, for the Parliament then made the election before;

before; for free elections of Members of the High Court of Parliament are pro bono publico, and not to be compared to other cases of election of Maiors, Bailiffes, &c. of Corporations, &c.

If one be duly elected Knight, Citizen, or Burgesse, and the Sheriffe returne another, the returne must be reformed, and amended by the Sheriffe: and he that is duly elected must be inserted: for the election in these cases is the foundation, and not the returne. Rot. Parl. 5 H. 4. nu. 38.

By originall grant or by custome, a selected number of Burgesses may elect and binde the residue.

Concerning Charters of Exemption.

The King cannot grant a Charter of exemption to any man to be freed from election of Knight, Citizen, or Burgesse of the Parliament (as he may doe of some inferiour Office or places) because the elections of them ought to be free, and his attendance is for the service of the whole Realme, and for the benefit of the King and his people, and the whole Commonwealth hath an interest therein: and therefore a Charter of exemption that King H. 6. had made to the Citizens of York of exemption in that case, was by Act of Parliament enacted and declared to be voide. And though we finde some presidents that Lords of Parliament have sued out Charters of exemption from their service in Parliament, yet those Charters are holden to be void: for though they be not eligible, as is aforesaid, yet their service in Parliament is for the whole Realme, and for the benefit of the King and his people, of which service he cannot be exempted by any Letters Patents. And if he hath laesam phantasiam, or be extremely sick, or the like, these be good causes of his excuse in not comming, but no cause of exemption, for he may recover his memory and health &c. So as the said presidents were grants de facto, not de jure: for if the King cannot grant a Charter of exemption from being of the grand Assise in a Writ of right, or of a Jury in an Attaint for the mischiefe that may follow in those private actions; à fortiori, he cannot grant any exemption to a Lord of Parliament; for his service in Parliament is publique for the whole Realme. But if any Lord of Parliament be so aged, impotent, or sick, as he can not conveniently without great danger travell to the High Court of Parliament, he may have license of the King under the great Seale to be absent from the same during the continuance or prorogation thereof: but if the rehearsall be not true, or if he recover his health, so as he become able to travell, he must attend in Parliament. Or without any such license obtained, if he be so aged, impotent, or sick, as is aforesaid, and yet is amerced for his absence, he may reasonably and honestly excuse himselfe by the statute of 5 R. 2. Pasc. 3 E. 3. fo. 19. tit. coron. F. 161; 29 H. 6. cap. 3. Rot. par. 1 part. 11 E. 3. Rot. par. 4. part. 1 E. 4. m 15. pro Do. Beauchamp. Rot. par. 2 E. 4. part. 2. m. 2. pro Dom. Vesey. 39 E. 3. 15. 34 H. 6. 25. 35 H. 6. 42. 5 R. 2. c. 4. stat. 2.

After the precept of the Sheriffe directed to the City or Borough for making of election, there ought secundum legem & consuetudinem Parliam. to be given a convenient time for the day of the election; and sufficient warning given to the Citizens or Burgesses that have voices, that they may be present: otherwise the election is not good, unlesse such as have voices doe take notice of themselves and be present at the election.

Any election or voices given before the precept be read and published, are void, and of no force: for the same electors after the precept read and published may make a new election and alter their voices, secundum legem & consuetudinem Parliamenti.

Thus much have we thought good to set downe concerning Knights, Citizens and Burgesses, because much time is spent in Parliament concerning the right of elections, &c. which might more profitably be imployed pro bono publico.

Now to treat more in particular (as it hath been much desired) of the lawes, customes, liberties and privileges of this Court of Parliament (which are the very heart-strings of the Commonwealth, whereof we have remembred some: and you may see some * few other examples in the margent, too long here to be rehearsed) See before pag. 24, 25. * 16 R. 2. Rot. Claus. in dorso. Rot. Parl. 11 R. 2. nu. 7. 1 H. 5. nu. 9. cap. 1

1 H. 4. nu. 143. 2 H. 4. nu. 11. 2 H. 4. ca. 1. Rot. Parl. 9 H. 4. *Indemnity des Seigniours & Comment.* 4 H. 8. ca. 8. vers. finem. a generall law. 6 H. 8. c. 6. in the Preamb.

rehearsed) would take up a whole Volume of it selfe: certain it is, as hath been said, that Curia Parliamenti suis propriis legibus subsistit.

All the Justices of England and Barons of the Exchequer are assistants to the Lords to informe them of the Common law, and thereunto are called severally by Writ. * Neither doth it belong to them (as hath been said) to judge of any law, custome, or priviledge of Parliament. And to say the truth, the lawes, customes, liberties, and privileges of Parliament are better to be learned out of the Rols of Parliament, and other Records, and by presidents and continuall experience, then can be expressed by any one mans pen.

Per varios actus legem experientia fecit.
Multa multo exercitamentis facilius, quam regulis percipies.

Rot. Parl. 5 H. 4. nu. 12. 23 H. 6. nu. 45. 27 H. 6. nu. 18. 31 H. 6. nu. 26, 27 Lamb. inter leges Edw. Confessoru, ca. 3. Ad Synodos, ad capitula venientibus, sive summoniti sunt, sive per se quid agendū habuerint, sit summa pax.

Consultations in Parliament for maintenance of the Navy.

In many Parliaments consultations have been had for the maintenance of the Navy of England, and remedies provided against decay of the same: as taking one example for many. In the Parliament holden in Anno 45 E. 3. the Commons amongst their petitions do affirme, that the decay of the Navy doth arise by three causes. First, for that sundry mens ships are seised for the King, long before they serve, whereby the owners are driven at their charges to find their Mariners, to their undoing. Secondly, for that Merchants, the nourishers of the Navy, are oft restrained in their shipping, whereby Mariners are driven to seek other trades and livings. Thirdly, for that the Masters of the Kings ships doe take up Masters of other ships as good as their selves are, whereby the most of those ships do lye still, and the Mariners enforced to seek new livings: whereof they prayed remedy. To this petition of right the Kings royall answer was, That he would provide remedy.

Rot. Parl. 45 E. 3. nu. 32. The decay of the Navy.

The Kings Navy exceeds all others.

The Kings Navy exceeds all others in the world for three things, viz. beauty, strength, and safety. For beauty, they are so many Royall Palaces: for strength (no part of the world having such Iron and Timber as England hath) so many moving Castles and Barbicans: And for safety, they are the most defensive walls of the Realm. Amongst the ships of other Nations, they are like Lions amongst silly Beasts, or Falcons amongst fearfull fowle.

In the reign of Queen Elizabeth (I being then acquainted with this busnesse) there were 33 besides Pinnaces; which so guarded and regarded the navigation of the Merchants, as they had safe vent for their commodities, and trade and traffick flourished. A worthy subject for Parliaments to take into consideration, and to provide remedy as often as need shall require. For navigation, see Gen. 6, 14. Sapient. 14. 6. * Remp. quasi navem existimare debemus, quæ omnium manibus officioq; indiget, &c. A leak in a ship is timely to be repaired: For as it is in the naturall body of Man, so it is in the politick body of the Commonwealth. Non morbus in plerisq; sed morbi neglecta curatio corpus interficit. And thus much for consultations in Parliament concerning the Navy of England.

* Patricius, lib. 5. De institutione Reipublicæ.

Of the Burgesses of Parliament. See the first part of the Institutes, Sect. 164. Verb. [Veigne les Burgesses al Parliament.] And there have been since the Conquest about 300 Sessions of Parliament, whereof divers are not printed.

About 300 Sessions of Parliament since the Conquest.

In perusing over the Rols of Parliament we find, First, divers Acts of Parliament in print that are not of Record in the Roll of Parliament. Secondly, many Acts of Parliament that be in the Rols of Parliament, and never yet printed. Thirdly, divers Clauses omitted in the print which are in the Parliament Roll. Fourthly, more in the print then in the Record. Fifthly, many variances between the print and the Roll. Sixthly, Statutes repealed or disaffirmed, and yet printed, &c. Seventhly, whole Parliaments omitted out of the print. Eightly, whole Parliaments repealed, or a great part.

And of every of these taking some examples; for to handle all at large would require a whole Treatise, which (we having broken the Ice) some good man and lover

lover of his countrey (we hope) will undertake to wade thorow.

As to the first, These are in print and not of Record. * 20 E. 3. the oath of the Judges. 27 E. 3. cap. 4, 5, 6, 7, 8. concerning the Alneger and Gascoign Wines. 37 E. 3. cap. 7. touching silver vessell. 37 E. 3. cap. 19. of Hawks. 2 R. 2. cap. 5. of Mewes. Vid. 11 R. 2. 11. 2 R. 2. cap. 3. of tained guilts. 7. R. 2. cap. 15. against maintenance 9 R. 2. cap 3. of error and attaint. 11 R. 2. cap. 4, 5, & 6. not of Record. 13 R. 2. cap. 11. touching Clothes. 13 R. 2. cap. 19. concerning Salmons. 13 R. 2. cap. 2. touching Pilgrims. 13 R. 2. cap. 15. concerning the Kings Castles and Gaoles. 14 R. 2. ca. 7. concerning Tinne. 17 R. 2. cap. 8. of unlawfull Assemblies. 17 R. 2. cap. 9. concerning Salmons. 27 H. 6. ca. 3. touching imployments, &c. To the first. * See the third part of the Institutes, *De corrupto Judice.*

As to the second: These Acts of Parliament are of Record, and not in print. An. 11 E. 3. the creation of the D. of Cornwall, &c. by authority of Parliament. 3 R. 2. nu. 39. concerning Justices of Peace, a profitable law for them. 8 R. 2. nu. 3 1. concerning the Jurisdiction of the Constable & Marshall. 20 R. 2. concerning the legitimation of the children of John of Gaunt D. of Lanc. by Kath. Swinford. 5 H. 4. nu. 24. a Commission or Act of Parliament for arraying & mustering of men. 8 H. 4. nu. 12. Clergy exempted from arraying and mustering of men. 11 H. 4. nu. 28. against Bribery and Brocage in great Officers, Judges, &c. 11 H. 4. nu. 63. concerning Attornies, &c. 6 H. 6. nu. 27. that a Queen of England Dowager, shall not contract her selfe or marry without the Kings license. 9 H. 6. nu. 25. concerning fees of Priby Counsellors, and other head Officers. And very many of hers. To the second. See the Princes case lib. 8. fo. 1.

As to the third: In these Acts of Parliament, divers clauses are omitted out of the print, which are in the Parliament Roll. 36 E. 3. cap. 3. in the Act of Purveyors, &c. in the clause of the penalty, the Steward, Treasurer, and Comptroller are expresly named, but omitted in the print. 2 R. 2. stat. 2. cap. 4. in confirmation of liberties, &c. saving the Kings regality is omitted. 13 R. 2. cap. 1. concerning presentations of the King, the last clause, concerning ratifications of the King, is omitted. 13 R. 2. cap. 2. touching provisions. 14 R. 2. cap. 4. nu. 9. concerning Regrators of wools, high prices omitted in the print. 17 R. 2. cap. 4. of Salt, leaveth out Hertfordshire. 2 H. 5. cap. 3. nu. 38. concerning enquests. 2 H. 5. ca. 1. nu. 30. concerning Justices of peace. 9 H. 4. cap. 8. nu. 43. concerning provisions. 8 H. 6. nu. 50. cap. 10. concerning proces during the Kings will, omitted in the print. To the third.

As to the fourth: In these there is more in the print then in the Record. 9 H. 4. cap. 8. nu. 43. touching provisions. 2 H. 5. stat. 2. cap. 3. nu. 38. touching Jurors, &c. To the fourth.

The fifth: In these the print vary from the Record in some materiall thing. Generally in all the statutes made concerning provisions, or other the usurpations of the Pope, the biting and bitter words are left out in the print. As to take an example or two. Vi. 38 E. 3. in print. cap. 1, 2, 3, 4. and in the Roll. nu. 9. &c. 3 R. 2. cap. 3. in print. Rol. nu. 37. &c. the Bishops being Lord Chancellors. 9 R. 2. nu. 1. the print mistakes the beginning of the Parliament, viz. the Monday after S. Luke, for Friday. 9 H. 4. cap. 2. nu. 26. concerning Attornies, &c. A Rol of Parliament intituled 14 E. 4. where it should be 13 E. 4. 9 H. 5. cap. 2. & 3 printed as perpetuall in some Bookes, where they were to endure but untill the next Parliament. To the fifth.

The sixth: Statutes pretended to be enacted, and after disaffirmed, and yet printed. 5 R. 2. cap. 5. stat. 2. touching inquiries of Heresies. Anno 6 R. 2. nu. 52. disaffirmed by the Commons, for that they protested it was never their meaning to be justified, and to bind themselves and their successors to the Prelats, no more then their ancestors had done before them. Robert Braibroke Bishop of London was then Lord Chancellor. By this and that which followes, it appeareth how necessary it was in those dayes to have some of the Commons to be (as hath been said) at the ingrossing of the Parliament Rols, as appeareth Rot. Parl. Anno 6 H. 4. nu. 56. 7 H. 4. nu. 65. &c. & Modo tenend Parl. cap. 8. 2 H. 4. To the sixth.

cap.

Rot.Parl.11 H.4. nu.12.vide 7 H.4.nu.11.

cap.15. diſavowed by the Commons, and yet the pretended Act printed 2 H.5. cap.6. againſt Preachers, diſavowed the next Parliament by the Commons, for that they never aſſented, and yet the ſuppoſed Act printed.

To the ſeventh.

The ſeventh: Whole Parliaments omitted out of the print, wherein there be many notable things to be obſerved. An.3 E.2. a Parliament holden at Weſtm. 3 Sept. Dorſ. Clauſ. 2 E.2.m. 14. & 22. Ann. 4 E.2. apud London. 5 E.2. apud Weſtm. 6 E.2. ib. bis. 7 E.2. ib. 8 E.2. apud Eborum. 11 E.2. apud Weſtm. 16 E.2. apud Rippon, & poſtea apud Eborum. An. 6 E.3. a Parliament holden at Weſtminſter the monday after the feaſt of S. Gregory. Anno 8 E.3. a Parliament holden at Yorke the day before the feaſt of S. Peter in Cathedra. Anno 11 E.3. at Weſtm. whereat the Prince was created Duke of Cornwall, &c. An. 13 E.3. holden at Weſtm. in 15 Mich. 22 E.3. at Weſtm. the Monday next after the week in the middeſt of Lent. 29 E.3. a Parliament holden at Weſtm. the day after S. Martin. 40 E.3. at Weſtm. the Monday after the invention of the Croſſe. 7 R.2. at Weſtm. the Friday after the feaſt of S. Mark, &c.

To the eighth.

The eighth: whole Parliaments repealed and made void by ſubſequent Parliaments. 1 H.4. cap. 3. repealed. 21 R.2. which had repealed the Parliament of 11 R. 2. and reviveth the ſame. By 39 H.6. cap. 1. a Parliament holden at Coventry Anno 38 H.6. is wholly repealed. Rot. Par. 12 E. 4. nu. A whole Parliament holden Anno 49 H.6. & readeptionis regni ſui primo, is repealed and reverſed. [a] Vide the Parliament of 15 E.3. repealed. Rot.Parl.anno 17 E.3.nu. 23. For there it is agreed that the ſtatute of 15 E.3. ſhall be utterly repealed, and loſe the name of a ſtatute, as contrary to the laws and prerogative: and for that ſome Articles there made are reaſonable, it is agreed, that ſuch Articles and others agreed in this Parliament ſhall be made into a ſtatute by the advice of the Juſtices.

[a] Where the printed book ſuppoſe that there was another Parliament in Anno 15 E.3. whereby the former ſtatute was repealed, the truth is, the Parliament was holden at Weſtm. 15 Paſch. Anno 17 E.3.

[b] Many Records of Parliament can hardly be underſtood, unleſſe you joyne thereunto the Hiſtory of that time. For example: [c] The Cardinall of Winchester, Uncle to the King, declareth in open Parliament, that he being in Flanders, in his journey to Rome, returned back of his owne will to purge himſelfe of a bruit, that he ſhould be a Traytor to the Realm, whereof (no accuſation being againſt him) he was eaſily purged by the Duke of Gloc. Protector, by the Kings commandement. But adde the Hiſtory thereunto, that the Cardinall having certaine of the Kings Jewels in gage, meant to have them brought after him: but theſe Jewels being arreſted and ſtay'd at Sandwich by the Kings commandement, and the bruit hereof comming to the Cardinals eare (he being therewith exceedingly troubled) for the recovery of them, returned in poſt to the Parliament. Now after he was purged of the bruit of ſuppoſed treaſon; touching the ſaid Jewels ſtaped at Sandwich to the great hindrance of the Cardinall, as he complained; It was on a motion on his behalfe, ordered that the Cardinall ſhould pay to the King Six thouſand pound more for them, and lend to the King thirteen thouſand pound, which was done.

[b] Hiſtories ſometime explaine Records of Parliament.

[c] Rot.Parl. 10 H.6.nu.14.

This appeareth in the ſame Parliament nu.15.

And for a concluſion hereof, and of this Chapter of the High Court of Parliament, it is to be remembred, that by the ſtatute of 42 E.3.cap.1. all Statutes are repealed that are againſt Magna Carta, or Carta de Foreſta.

Parliaments in Scotland. In Ireland.

See hereafter cap.75. how and in what manner Parliaments be holden in Scotland. And cap.77. how and in what manner Parliaments be holden in Ireland, and how Bils ſhall paſſe there, never before this time publiſhed, as we know.

CAP.

CAP. II.

Of the Councell Board, or Table.

This is a moſt noble, honourable, and reverend Aſſembly of the King and his Priuy Councell in the Kings Court or Palace: [a] With this Councell the King himſelf doth ſit at his pleaſure. Theſe Counſellors, like good Centinels and Watchmen, conſult of, and for the [b] publique good, and the honour, defence, ſafety, and profit of the Realm. A conſulendo, ſecundum excellentiam, it is called the Councell Table. [c] Priuate cauſes, leſt they ſhould hinder the publique, they leave to the Juſtices of the Kings Courts of Juſtice, and meddle not with them: they are called Concilium regis privatum, concilium ſecretum, & continuum concilium regis. [d] The number of them is at the Kings will, but of ancient time there were twelve, or thereabouts. Of the diverſity of the Kings ſeverall Councels, you may read in the Firſt part of the Inſtitutes, Sect. 164.

See Rot. Par. 42 E.3. parte 1. m.13. de concilio Regis.

a Rot. Clauſ. 12 E.3. parte 2. m.19. 39 E.3. fo.14. Rot. Par. 1 R.2. parte m.16. 8 H.4. nu.76. &c. Rot. Par. 2 H.6. nu.15.

b Pro bono publico.

c 20 E.3. ca.1. 25 E.3. ca.1. ſtat. 4. 42 E.3. ca.3.

Rot. Par. 1 R.2 nu.87. 112. Rot Par. 7 H.4. nu.41. 11 H.4. nu.14. 23 47. d Rot. Par. 50 E.3. nu. 10, 12. 1 R. 2. nu. 4. Rot. Par. 1. parte, m.10. Rot. Parl. 7 H.4. 31. 41. 66, 67. 1. part of the Inſtitutes, Sect. 193. Rot. Clauſ. 16 E.2. m. 3. in Dorſ. *Hen. De bello mente haro de magno & de ſecreto concilio regis jurat'.*

King E. 3. would have his Counſellors to have foure properties, 1. That he be pircus ſui, knowing that he would never be provident for him, that would not be a good husband for himſelf. 2. That he ſhould not be cupidus rei alienæ, no covetous, nor greedy man, for ei nihil turpe, cui nihil ſatis. 3. That he ſhould be avarus reipublicæ, covetous for the Kings treaſure and Commonwealth: and 4. That he ſuper omnia ſit expertus; in what place the King ſhall employ him, that he be expert; for great offices, are never well managed by Deputy, where the Officer himſelf is but a Cipher.

To theſe Counſellors all due honour and reverence is to be given, for they are incorporated to the King himſelf, and bear part of his cares, they are his true Treaſurers, and the profitable Inſtruments of the State. Such honour was given to Counſellors of State in ancient time, [e] that if one did ſtrike in a Senators or Counſellors houſe, or elſewhere in his preſence, he was fined.

Stanf. 72. F. *Senatores ſunt partes corporis regis.* Rot. Par. 3. H.6. nu.3.

e Inas ca.46.

[f] See Ver. Mag. Cart. fo.51.2. parte. Hugh Spencer the Father, Lord Spencer Earl of Wincheſter, and the Kings Chamberlain, and Hugh his ſon Earl of Gloc' were adjudged in Parliament to be exiled, &c. amongſt other Articles, as were, Firſt, for that they by their evill covin would not ſuffer the Grandees of the Realm, nor the Kings good Counſellors to ſpeak with or come neer the King, or to give him good Counſell, or that the King might ſpeak with them, but only in the preſence or hearing of the ſaid Hugh the father, and Hugh the ſon or of one of them, [g] at their will, [g] according to ſuch things as pleaſed them. Secondly, for giving evill counſell to the King, not to anſwer the petitions of the great men and others, but at their pleaſure. Thirdly, that they, to attain by their malice and covetouſneſſe to the diſheritance of the great men of the Realm, and deſtruction of the people, put out good and covenable Miniſters, which had their places by aſſent and put in others falſe and evill of their covin, that they ſhould not cauſe right to be done. And Sheriffs, Eſcheators, Conſtables of Caſtles, and others in the offices of the King, not covenable for the King, nor for the people they did make, and cauſed Juſtices to be made not Conſuſants in the laws of the land, to hear and determine things touching the great men and people of the Realm, &c. And ſo, that which ought to be for the maintenance of the

f Alveredus c.15. Hugh Spencer the father, and Hugh the ſon evill Counſellors.

peace, and of good men, and punishment of evill, was turned to the disheritance of the great men, and destruction of the people. Fourthly, that they falsely and maliciously did counsell the King to raise horse and arms, &c. in destruction of the good people, against the form of Magna Carta, and so by their evill counsell would have moved war within the Realm, to the destruction of Holy Church and of the people, for their proper quarrell. Fifthly, for defeating by their evill Counsell that which the King had granted in his Parliament by his good Counsell, by the assent of the Peers of the Land, to the dishonour of the King, and against right and reason. Sixthly, they would not suffer the King to take reasonable fines, &c. upon alienations, &c. Read the whole.

Magna Carta.

Hereby it appeareth that one or two ought not to be sole Counsellors, and to make a Monopoly thereof for true it is that Homer saith,

Homer.
See the Artic'es against Cardinal Wolsey, hereafter cap. Chancery, pa. Art. 9. 10. 15.

Haud quaquam poteris tu fortiter omnia solus,
Namque aliis divi bello pollere dederunt,
Huic saltandi artem, voce huic, citharaque canendi.
Inseruitque sagax alii sub pectore magnus
Jupiter ingenium, at multis est * utilis ille.

* Util s sed non solus.

[a] The duty of a Privy Counsellor appeareth by his oath, which consisteth on these Articles or parts.

a R. Par. 11 H. 4. nu. 14. N ta Vid. Ver. Mag. Cart. parte 1. fo. 165 *jramentum consiliariorũ.* Vide Fleta lib. 1. ca. 17.

1. That he shall as far forth as cunning and discretion suffereth, truly, justly and evenly counsell and advise the King in all matters to be commoned, treated, and demeaned in the Kings Councell, or by him as the Kings Counsellor.

2. Generally in all things that may be to the Kings honour and behoof, and to the good of his Realms, Lordships and Subjects, without partiality, or exception of persons, not leaving, or eschewing so to doe for affection, love, meed, doubt, or dread of any person or persons.

Nota, vide inf. 5.

3. That he shall keep secret the Kings Counsell, and all that shall be commoned by way of counsell in the same, without that he shall common it, publish it, or discover it by word, writing, or in any otherwise to any person out of the same Councell, or to any of the same Councell, if it touch him, or if he be party thereof.

Rot. Par. 11 H. 4. nu. 28.

4 That he shall not for gift, meed, nor good, ne promise of good by him, nor by mean of any other person receive or admit for any promotion, favouring, nor for declaring, letting, or hindring of any matter or thing to be treated or done in the said Councell.

Nota, *supra.* 2.

5. That he shall with all his might and power help and strengthen the Kings said Councell in all that shall be thought to the same Councell for the universall good of the King and his land, and for the peace, rest and tranquillity of the same.

6. That he shall withstand any person or persons of what condition, estate or degree they be of, that would by way of feat, attempt, or intend the contrary.

7. And generally that he shall observe, keep and doe all that a good and true Counsellor ought to doe unto his Soveraign Lord.

By force of this oath and the customs of the Realm he is a Privy Counsellor without any Patent or grant, during the life of the King that maketh choice of him.

Rot. Par. 9 H. 6. nu. 25.

It is enacted that all the Kings Counsellors and other head officers there named shall have yearly out of the Exchequer such fees by way of reward as are there expressed.

Every Privy Counsellor hath a voice and place in the Court of Star-chamber, as in the Chapter of the Court of Star-chamber appeareth.

For the better performance of which oath, King H. 8. would wish that his Counsellors would commit Simulation, Dissimulation & Partiality to the Porters lodge when they came to sit in Councell.

Of

Of the Preſident of the Councell.

There is, and of ancient time hath been a Preſident of the Councell, who was ſometime called Principalis conſiliarius, and ſometime Capitalis conſiliarius, Rot. Pat. 9 E. 2 Comes Lancaſt'. 50 E. 3. 1 R. 2. 1. pars. Pat. nu. 22. 1 H. 6. nu. 26, 27, Dux Bedf. Rot. Pat. 1 H. 6. parte 3. Dux Gloc' Rot. Parl. 10 H. 6. nu. 9. Dux Gloc'. See Rot. Parl. 11 H. 6. nu. 19. Rot. Parl. 22 H. 6. Dux Eborum. Rot. Pat. 13 E. 4. part 1. Johannes Ruſſel Epiſcopus Roffen. & poſtea Lincoln Præſidens concilii. Int Record Curiæ ſtellat Johannes Fiſher Epiſcopus Roff' Præſidens concilii 12 H. 7. A. 25 H. 8. uſq; 37 H. 8. Carolus Brandon Dux Suff in libro pacis, Rot. Parl. 1 E. 6. Pawlet. In the Journall book of Parliament. 5 E. 6. & 7 E. 6. Dux Northumb. 1 & 2 Ph. & Mar. comes Arundel, &c.

Principalis conſiliarius. Capitalis conſiliarius. You ſhall have what we have obſerved by our owne reading, of others leſſe than which is here wanting.

Acts of Parliament naming the Preſidents of the Councell, 21 H. 8. cap. 20. 31 H. 8. ca. 10. 34 H. 8. ca. 1.

This office was never granted but by Letters Patents under the great Seal durante beneplacito, and is very ancient: for John Biſhop of Norwich was Preſident of the Councell In Anno 7 Regis Johannis, Holl. fo. 169. Math. Paris 205. & Math. Weſtm. Dormivit tamen hoc officium regnante magna Elizabetha.

The Lord Preſident is ſaid in the ſtatute of 21 H. 8. ca. 20. to be attending upon the Kings moſt royall perſon, and the reaſon of his attendance is, for that of latter times he hath uſed to report to the King the paſſages, and the ſtate of the buſineſſe at the Councell Table. See 50 E. 3. ubi ſupra.

21 H. 8. ca. 20. Vid. Rot. Parl. 50 E. 3. nu. 12.

Next to the Preſident of the Councell, (as more fully appeareth in the Chapter of Precedency) ſitteth in Councell &c. the Lord Privy Seal, who beſides his oath of a Privy Counſellor, taketh a particular oath of the Privy Seal, which conſiſteth on foure parts: 1. That he, as far forth as his cunning and diſcretion ſuffereth, truly, juſtly, and evenly execute, and exerciſe the office of the Keeper of the Kings Privy Seal to him by his Highneſſe committed. 2. Not leaving or eſchewing ſo to do for affection, love, meed, doubt, or dread of any perſon or perſons. 3. That he ſhall take ſpecial regard, that the ſaid Privy Seal in all places where he ſhall divert unto, may be in ſuch ſubſtantiall wiſe uſed and ſafe kept, that no perſon without the Kings ſpeciall commandment or his aſſent, or knowledge, ſhall move, ſeal, or imprint any thing with the ſame. 4. Generally, he ſhall obſerve, fulfill, and doe all and every thing, which to the office of the Keeper of the Kings Privy Seal duly belongeth and appertaineth.

¶ *Lord Privy Seal.* See Rot. Parl. 50 E. 3. nu. 10. & nota bene. *The oath of the Lo. Privy Seal.*

This is an office of great truſt and skill, that he put this Seal to no grant without good warrant, nor with warrant, if it be againſt law, undue, or inconvenient, but that firſt he acquaint the King therewith.

Upon the Lord Privy Seal are attendant four Clerks of the Privy Seal: Now how, and in what wiſe, the Kings grants, writtings, and leaſes, ſhall paſſe the three Seals, viz. the Privy Signet, the Privy Seal, and the Great Seal, and the duties of the Clerks of the Privy Signet, and Privy Seal, and what fees ſhall be paid, and where none at all, &c. and many Articles concerning the paſſing of the Kings grants, &c. you may read in the ſtatute of 27 H. 8. a law worthy of obſervation. And of this Act you may read Lib. 8. fo. 18. b. in the Princes caſe. This officer is named in the ſtatutes of 2 R. 2. ca. 5. and 12 R. 2. ca. 11. * Clerk of the Privy Seal. In Rot. Parl. 11 H. 4. nu. 28. Garden del Privy Seal: and in the ſtatute of 34 H. 8. ca. 4. Lord Privy Seal. This Seal is called by ſeverall names. By the ſtatute of 11 R. 2. ca. 10. it is provided that Letters of the Signet, nor of the Kings ſecret Seal ſhall be from henceforth ſent in damnage or prejudice of the Realm, nor in diſturbance of the law. Vide Mir. ca. 3. §. Exception al power de Judge.

27 H. 8. ca. 11.

27 H. 8. ca. 11.

* An humble name of a great Officer, and in thoſe Acts ranked amongſt the Grandees of the Kingdome.

In the ſtatute of Articuli ſuper Cartas, cap. 6. 28 E. 1. it is called the little Seal, and likewiſe in the ſtatute of 2 E. 3. cap. 8. it is ſo called. Regiſter. fo. 186. Parvum Sigillum. 50 E. 3. nu. 185. F. N. B. 180. Fleta lib. 2. cap. 12. §. Eſt ine. &c. Cuſtos privati Sigilli, Clerks of the Signet, Clerici Signetti are named

See the 2 part of the Inſtit. Artic. ſuper Cart. ca. 6.

F. N. B. 85. 2. See Artic. ſuper Cartas, ubi ſupra. Lib. 8. ubi ſupra.

in the ſaid Act of 27 H. 8. &c. and are four in number attendant upon the Kings principall Secretary, who always hath the keeping of this Seale or Signet, for ſealing of the Kings Priuy Letters: theſe four Clerks ſit at the Secretaries Board. He that deſireth to read more of the duty of Priuy Counſellors, and how, and for what cauſes they are to be puniſhed, if they offend; let him read the Parliament Roll of the 50 yeare of E. 3. nu. 15, 16, 17. 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, &c. 34, 35, &c.

9 R. 2. nu. 12. and 11 H. 4. nu. 28. not in print. 3 E. 6. ca. 5. repealed.

Acts of Parliament concerning the Kings Priuy Counſell, 25 E. 3. cap. 4. ſtat. 4. 28 E. 3. cap. 31. 42 E. 3. cap. 3. in print. 9 R. 2. nu. 12. 11 H. 4. nu. 28. 13 H. 4. cap. 7. 3 H. 7. cap. 14. 3 E. 6. cap. 5. 21 Jac. ca. 3. concerning warrants of aſſiſtance, &c. 3 Caroli ca. 1. in the Petition of right, concerning loans, &c. impriſonment, &c. martiall law, ſouldiers, &c.

See hereafter pa. in the Chapter of the Chancery in the Articles againſt Cardinall Wooleſey, Artic. 9, 10, 15, &c. concerning Priuy Counſellors.

It appeareth by the Writs and Records of Parliament, that the high Court of Parliament is reſolved to be holden by the King per adviſamentum conſilii ſui, that is, by advice of his Priuy Counſell.

Divers of Parliament for the Priuy Counſell, and other things concerning them in the Rols of Parliament. 50 E. 3. nu. 10. 12. 15. 21. 34. 42 E. 3. nu. 27. Sir John Lees caſe. 1 R. 2. nu. 87. 112. Rot. Pat. 1 R. 2. parte 1. m. 16. 2 R. 2. ſtat. 1. nu. 49. Rot. Parl. 1 H. 4. nu. 2. 7 H. 4. nu. 31, 32, 33. 41. 66, 67, 68, &c. 11 H. 4. nu. 14. 13 H. 4. nu. 3. 1 H. 6. nu. 30, 31, 32. 2 H. 6. nu. 15, 16, 17. 8 H. 6. nu. 27, 28. certain Articles to the number of eighteen touching the order of the Kings Councell (amongſt which the eleventh is, that all offices and benefices of the Kings gift, ſuch as had ſerved him or his father, ſhould be preferred thereunto) are eſtabliſhed by the King, the Biſhops, and Lords. 9 H. 6. nu. 25. 11 H. 6. nu. 19. Six Articles, whereof the laſt was, that a Roll ſhould be made of ſuch as at any time had ſerved in the wars, or otherwiſe, to the end they ſhould be preferred to offices and benefits. 12 H. 6. nu. 4. De intendentia conſiliatorum. 31 H. 6. nu. 30, Vide Rot. Pat. 32 H. 6. parte 1. m. 22.

Acts of Councell concerning the ſame. Rot. finium. 20 E. 3. m. 8. Rot. Claus. 4 H. 4. in Dorſ. m. 13. Clauſ. 25 E. 3. m. 10. Pat. 19 R. 2. parte 2. m. 8. Clauſ. 20 E. 3. parte 1. m. 26. The Clerks of the Councell are attendants upon the Lords and others of the Priuy Councell. Concerning the Clerks of the Councell and their duty, ſee Rot. Parl. Anno 1 H. 6. nu. 32. 2 H. 6. nu. 17, &c.

Of theſe Acts of Parliament, Orders in Parliament, and Acts of Councell we have referred pon (for avoyding of tediouſneſſe) to the originals. Qui ambulat fraudulenter revelat arcana, qui autem fidelis eſt celat, &c.

Prov. 11. 13.

Tobit. 12. 7. Bonum eſt abſcondere ſacramentum regis, opera autem Dei revelare honorificum.

Valerius lib. 4. Regulæ. Nihil magis optandum, quam ut rerum gerendarum conſilia, quoad ejus fieri poterit, quam maxime occulta ſint.

Ovid. *Eximia eſt virtus præſtare ſilentia rebus,*
Ac contra gravior culpa tacenda loqui.

Vegetius lib. 3. de re militari. Nulla ſunt meliora conſilia, quàm quæ ignoraverit adverſarius antequam facias, &c. Quid fieri debeat, tractato cum multis; quid facturus ſis, cum paucissimis ac fideliſſimis, &c. Conſilia niſi ſint abſcondita, exitum raro proſpiciunt.

Eraſmus in Epiſt. ad Curtium. Conſilia callida & audacia prima fronte lata, tractatu dura, eventu triſtia.

In conſiliario imprimis requiritur temperantia, quia * novandis, quam gerendis rebus aptiora ingenia illa ignea. And it is certain that men of fiery & furious ſpirits eaſily become factions.

Plinie. In conſiliario Principis tria maxime requiruntur, libertas, fides, & veritas: libertas conſilii eſt ejus vita & eſſentia, qua erepta, conſilium evaneſcit.

Tacitus. Privatæ res ſemper officerent, officientque publicis conſiliis, peſſimam veri affectus & judicii venenum ſua cuique utilitas.

Tu

Tu civem patremque geris, tu consule cunctis;
Non tibi, nec tua te moveant, sed publica vota.

All which, and much more are comprehended within the oath aboveſaid.

Some rules of Counſell, which in Councell we have obſerved, we will adde. Firſt, that it is ſafeſt to give a King counſell, when he demandeth it. Secondly, the trueſt and beſt counſell is ever given to a King, when the queſtion is ſo evenly propounded, as the Counſellor knoweth not, which way the King himſelf inclineth. Thirdly, that * præpropera conſilia ſunt raro proſpera; for reſolution ſhould never goe before deliberation, nor execution before reſolution. Fourthly, when upon debate and deliberation it is by the Counſell Table well reſolved, the [a] change thereof upon ſome private information is neither ſafe nor honourable, [b] nor that after reſolution timely execution be delayed. Fifthly, it is a meane of proſperous ſucceſſe when the queſtion is debated with a few, not that he ſhould rely upon them, but that thereby the ſtate of the queſtion may be well underſtood, to the end the ſame may be plenarily & fully propounded to the whole board. Sixthly, [c] good counſell is the ſoul of the State. Seventhly, when Counſellors do hide or diſguiſe the truth, it is full of danger, both to the King and to [d] themſelves. Eighthly, violent counſels are like to hot waters that may be good in an extremity, but the uſe of them doth ſpoil the ſtomach, and is ſtill requiſite them ſtronger and ſtronger, and by little and little they will leſſen their own operation. Laſtly, ſuch fear as doth not fall in conſtantem virum, is an enemy to good counſel: for what is fear, [e] but a betraying of ſuch ſuccours, as reaſon (and counſell) ſhould afford?

No Lord of Parliament takes any place of precedency in reſpect he is a Priby Counſellour. But under that degree ſuch place a Priby Counſellor ſhall take, as is ſet down in ſerie ordinum tempore H. 7. here after remembred in the Chapter of Precedency.

* Book of Iudg. 19. ver. ultimo. Conſider, conſult, and then give ſentence.

a Seneca. Non ſemper in uno gradu, ſed in una via, non ſemitat, ſed aptat.

b Saluſt. Ppriuſquam incipias, conſulto, & ubi conſulueris mature facto opus eſt.

c 11 H. 4. nu. 14.

d Malum conſilium conſulteri peſſimum. Rot. Clauſ. 18 H. 3. nu. 19. Segraves caſe. Rot. Par. 50 E. 3. nu. 24. Segnior Latimers caſe.

e Sap. 12.

CAP.

CAP. III.

Of the Power and Authority of the Protector and Defender of the Realm and Church of England during the Kings tender age.

SEE Rot.Parl. anno 1 H. 6. nu. 26.& 27. 2 H.6.nu.16.6 H.6. nu.22,23,24. 8 H.6.nu. 13. 11 H.6.nu. 19. 32 H. 6. nu. 71. where you shall finde his authority, place, and precedency, well expressed and described.

The surest way is to have him made by authority of the Great Councell in Parliament.

See Hollingsheds Chronicle, pa. 1069. which may give you occasion to search for the Records of such Protectors as are there rehearsed.

CAP. IV.

The Court of the High Steward of England, intituled, *Placita Coronæ coram* Thom. *Duce N. Seneschallo Angliæ.*

¶ *His Stile.*

HIs stile is Seneschallus Angliæ. This office is very ancient, and was before the Conquest. For I read in an ancient and authenticall Manuscript, intituled Authoritas Seneschalli Angliæ: where putting an example of his authority, saith: Sicut accidit Godwino comiti Kanciæ tempore regis Edwardi antecessoris Willielmi Ducis Normandiæ pro hujusmodi male gestis & consiliis suis (*per Seneschallum Angliæ*) adjudicatus & forisfecit Comitivam suam.

¶ *The antiquity of his Office.* Nota, then a Judg of the Peers of the Realm. 1 H. 4. 1. 13 H. 8. 13. Cust. de Norm. cap. 10.

In the time of the Conquerour William Fitz-Eustace was Steward of England. And in the reign of William Rufus and H. 1. Hugh Grantsemenel Baron of Hinkley held that Barony by the said Office.

Of ancient time this Office was of inheritance, and appertained to the Earldome of Leicester, as it also appeareth by the said Record: Seneschalcia Angliæ pertinet ad Comitivã de Leicester,& pertinuit ab antiquo. That is, that the Earldome of Leicester, was holden by doing of the office of Steward of England. Other Records testified that it should belong to the Barony of Hinkley. The truth is, that Hinkley was parcell of the possessions of the Earle of Leicester, for Robert Bellomont Earl of Leicester in the reign of H.2. married with Petronil daughter and heire of the said Hugh Grantsemenel Baron of Hinkley, and Lord Steward of England, and in her right was Steward of England. And so it continued, untill by the forfeiture of Simon Montford it came to King H.3. who in the 50 year of his reign, created Edmond his second son Earl of Leicester. Baron of Hinkley, and High Steward of England, which continued in his Line untill Henry of Bullinbrooke * son and heir of John of Gaunt Duke of Lancaster and Earle of Leicester, who was the last that had any estate of inheritance in the office of the Steward of England. Since which time it was never granted to any Subject, but only hac vice. And the reason was, for that the power

* Rot.Par. 21 R.2. nu. 4. Int. placita coronæ *Iohn of Gaunt* Duke of Lancaster and Earl of Leicester, Steward of England.

power of the Steward of England was so transcendent, that it was not holden fit to be in any subjects hands: for the said Record saith, [b] Et sciendum est quod ejus officium est supervidere, & regulare sub rege, & immediate post regem totum regnum Angliæ, & omnes ministros legum infra idem regnum temporibus pacis & guerrarum, &c. and proceedeth particularly with divers exceeding High powers and Authorities, which may well be omitted, because they serve for no present use.

[c] And albeit their power and authority have been since the reign of H. 4. but hac vice, yet is that hac vice limited and appointed. As when a Lord of Parliament is [d] indicted of treason or felony, then the grant of this Office under the Great Seal is to a Lord of Parliament, reciting the Indictment, [e] Nos considerantes quod justitia est virtus excellens & Altissimo complacens, eaq; præ omnibus uti volentes, ac pro eo quod officium Senescalli Angliæ, cujus præsentia pro administratione justitiæ & executione ejusdem in hac parte facien' requiritur, ut accepimus, jam vacat: De fidelitate, strenuitate, provida circumspectione, & industria vestris plurimum confidentes ordinavimus & constituimus vos *ex hac causa & causis* Senescallum nostrum Angliæ ad officium illud cum omnibus eidem officio in hac parte debitis & pertinentibus hac vice gerend', accipiend', & exercend', [f] dantes & concedentes vobis tenore præsentium plenam & sufficientem potestatem & authoritatem, ac mandatum speciale indictamentum prædict. &c. So as it appeareth, that this great Officer is wholly restrained to proceed only upon the recited indictment. And he to whom this Office is granted, must be a Lord of Parliament, and his proceeding is to be [g] secundum leges & consuetudines Angliæ, for so is his Commission. And hereof you may reade more at large in the third part of the Institutes, cap. High Treason. [h] Also at every Coronation he hath a Commission under the Great Seale hac vice, to heare and determine the claimes for grand Serjeanties and other honourable services to be done at the Coronation for the solemnization thereof: for which purpose the High Steward doth hold his Court some convenient time before the Coronation. See a president hereof before the coronation of King R. 2. John Duke of Lancaster then Steward of England, (who in claymes before him was stiled Treshonorable Seignior Roy de Castle & Leon, & Seneschal Dangliterre) and held his Court in Alba Aula apud Westm. die Jovis proxime ante coronationem. Quæ quidem coronatio habita & solemnizata fuit die Jovis sequente, *viz.* 16. Julii Anno 1 R. 2.

The first that was created hac vice for the solemnization of the coronation of H. 4. was Thomas his second son. [i] And upon the arraignment of John Holland Earle of Huntingdon, the first that was created Steward of England hac vice, was Edward Earl of Devon.

Rot. Parl. 37 H. 6. nu. 49. Thomas Courtney Earl of Devon was arraigned of High Treason before Humphrey Duke of Gloc. hac vice Steward of England, and acquited. And so was [k] the Lord Dacres of the North arraigned of High Treason before Thomas Duke of Norff. hac vice Steward of England, and acquited by 20 Peers.

When he sitteth by force of his Office he sitteth under a Cloth of estate, and such as direct their speech unto him say, Please your Grace my Lord High Steward of England. The stile of the said John of Gaunt was Johannes filius Regis Angliæ, Rex Legionis & Castellæ, Dux Aquitaniæ & Lancastriæ, Comes Derbiæ, Lincolniæ, & Leicestriæ, Seneschallus Angliæ. And in respect his power before it was limited was so transcendent, I finde no mention made of this great Officer in any of our ancient Authors, the Mirror, Bracton, Britton, or Fleta. It seemeth they liked not to treat of his authority. Neither do I finde him in any Act of Parliament, nor in any Book case before 1 H. 4. and very few since: which hath caused me to be the longer in another place to set forth his authority and due proceeding upon the arraignment of a Peer of the Parliament, by judiciall record and resolution of the Judges, agreeable with constant experience.

For the Etymologie and signification of [Seneschallus] see the first part of the Institutes,

His authority *hac vice*: and therefore he is not mentioned in the statute of 31 H. 8. c. 1. concerning the placing of great Officers

b Herewith agreeth the Custom. of Norm. cap. 10. fo. 17. Hollenth. Chron. 1. a. 866.

c His authority (*hac vice*) limited.

d See the second part of the Institutes Mag. Cart. cap. 29. 1 H. 4. cap. 1.

e He is sole Judge by the Common law & can make no Deputy.

f Stant. pl. cor. 152. 1 H. 4. fo. 1. 13 H. 8. fo. 11. b.

g His rule.

h His further authority.

V. 1 H. 4. fo. 1. Therefor *Tho. Walsingham* p. 363 and others who affirme that he was beheaded at Pleshy in Essex by the Commons, deserre.

k Term. Pasch 26. H. 8. of Justice *Spilmans* Report.

See the third Part of the Institutes, cap. Treason.

First part of the Inſtit. c. Sect. 78.

Inſtitutes: And though it hath ſeverall derivations, yet as being applied to England, it is properly derived from Sen, that is, Juſtice, and Schale, that is, Governour or Officer, that is, Præfectus ſeu officiarius juſtitiæ. And this agreeth well with his authority and duty to proceed (as hath been ſaid) ſecundum legis & conſuetudines Angliæ.

It is to be obſerved, that as the Peers of the Realm that be Triors or Peers, are not ſworne, ſo the Lord Steward being Judge, &c. is not ſworn; yet ought he according to his Letters Patents to proceed ſecundum legem & conſuetudinem Angliæ.

CAP. V.

The Honourable Court of Star-Chamber, *Coram Rege & Concilio ſuo*: Of ancient time, *Coram Rege in Camera*, &c.

¶ *That it is an eminent Court proved by Records, and Acts of Parliament.*

a 22 Lib. aſſ. pl. 52

b Rot. pat. 1. part. m. 13.

¶ *Fraud and falſehood.*

c Rot. pat. 1 part. m. 13.

¶ *Falſhood in an Officer and raſing of a Record.*

d Rot. clauſ. 42 E. 3. m. 8. in dorſ. Vid. Rot. pat. 2 R. 2. 1 par. m. *Camera Stellata*, for raſing. 12 R. 2. cap. 11. dev. le councel.

e Rot. clauſ. 41 E. 3. Camd. Brit. 130.

f Rot. clauſ. 16 R. 2. in dorſ. m. 11.

g Pat. 6 H. 5. & conſimile Anno 7 H. 5. pro manerio de Fitzerwicke in Com. Notff.

h Rot. clauſ. 17 H. 6.

In a the 28 year of the regin of E. 3. it appeareth, that the retorns Coram nobis are in three manners. Coram nobis in Camera (which, it is ſaid, was afterwards called Camera Stellata.) 2. Coram nobis ubicunque fuerimus in Anglia, which is the Kings Bench: and Coram nobis in Cancellaria. And of all the High and Honourable Courts of juſtice, this ought to be kept within his proper bounds and juriſdiction.

b In 38 E. 3. coram Rege & Concilio, John Redland complained of Robert Spinke for delivery of priſoners upon falſe ſuggeſtion made to the King: upon hearing the cauſe, the defendant was acquitted, the plaintife impriſoned.

c In 39 E. 3. Ralph Brantingham one of the Chamberlains of the Exchequer complained before the King and his Councell of Richard Ceſterfeild Clerk Deputy of the Kings Treaſurer, in the receipt, for divers allowances, payments, &c. unduly made, and for raſing of Records, &c. Upon the hearing of the cauſe by the whole Councell, the defendant was acquitted, and the plaintife removed from his office, and committed to priſon.

d The Abbot de Bruera, Ragge his Monk ſentenced coram Rege & Concilio, for raſing of Letters Patents, and inſerting other words: and the Letters Patents by ſentence cancelled.

e In Anno 41 E. 3. in a Bill of complaint exhibited to the King by Elizabeth the widow of Nicholas Awdeley plaintife, againſt Jane Awdeley defendant, who appeared before the Kings Councell, viz. the Chancellour, Treaſurer, Juſtices, and others aſſembled En la Chamber des Eſtoiels pres de la Receits.

f A ſuit depending before the King and Councell between the Abbot of Saint Auſten of Canterbury and others concerning Wrecks, &c. The Abbot brought his action at the Common law againſt the parties, who being thereupon arreſted and impriſoned, the Sheriffe was commanded by the Kings Writ to deliver them, and to forbear to ſerve any other Proces againſt them, and the reaſon there yeelded is notable, Quia non eſt juri conſonum, aut honeſtum, quod aliquis de hiis quæ coram nobis & concilio noſtro in diſcuſſione pendent, alibi inde interim placitari debeat, aut apparere.

g A ſuit depending before the King and his Councell, between W. G. of the one part, and H. S. of the other part: a Sequeſtration is ordered for the preſervation of the things in queſtion.

h In 17 H. 6. an inrolment of a confeſſion of John Ford of Lon. Mercer before the Lord Treaſurer and others of the Kings Councell in the Star-Chamber for the

the fraudulent packing and tranſporting of Wooll, with a Writ to the Sheriffe of London to ſet him on the Pillory.

The Abbot of Weſtminſter exhibited his Bill to the King againſt the Sheriffes of London for arreſting and drawing out with force a priviledged perſon out of the Sanctuary of S. Martins le grand belonging to the ſaid Abbey: which matter after due proceedings being heard in the Court of Star-chamber before the Lords and others of the Kings Councell, and Hodey and Newton Chief Juſtices, which Juſtices determining, that by law the party ought to enjoy the priviledge of Sanctuary, the Sheriffes were grievouſly fined in the Star-chamber by particular name: which ſentence the Lord Dier, as he hath reported under his owne hand, ſaw upon a reference to him and Juſtice Southcote out of the Star-chamber, Trin. 11 Reginæ Eliz. concerning the Sanctuary of Weſtm. for Hampton and Whiteacres being in for debt. And the Lord Dier made this Note with his owne hand. Nota, pur le Star-chamber. And this is a notable proof of the Juriſdiction of the Court for fining, &c. That the Bill was exhibited to the King, and that the two Chief Juſtices then did ſit, and were Judges (amongſt others) in that Court. Anno 29 H.6. Tr in. 11 Eliz. Dier. Manuſcripte not imprinted. 29

For divers Riots, Extortions, oppreſſions, and grievous offences by divers perſons done againſt the Kings peace and lawes, to divers of his liege people, commandement hath been given by the Kings Writs under the Great Seale (which continue untill this day) to appear before the King in the Chancery, or before him and his Councell at certaine dayes to anſwer to the premiſſes, which commandement hath been many times diſobeyed. Proviſion is made by that Act for the puniſhment of ſuch diſobedience, as by that Act appeareth. True it is, that this Act was but temporary, yet it affirmeth ſo much as before hath been ſaid. Stat. de 31 H.6. cap. 2. Vide Rot. Parl. 1 H.6. nu. 41.

Anno 35 H.6. a Writ of Certiorari was directed: Thomæ Kent Clerico Concilii: Volentes certis de cauſis certiorari ſuper tenorem cujuſdam Actus Paſch. ultime præterito apud Weſtm. in camera ſtellata concernen Johannem Ducem Norff. And ſee there proces of rebellion againſt the ſaid Duke. Ex bundello brevium Regis. 35 H.6.

Robert Davers a Counſellor at law by bill exhibited to the King, &c. for defamation of razing a Record. And the ſaid Robert by the Kings Councell in Camera ſtellata was acquited, and John Broket that made the razure ſentenced. Rot. clauſ. 11 H.6.

The Kings Councell aſſembled in the Star-chamber. The Lord Cromwels caſe. Rot. clauſ. 28 H.6.

An order in the Star-chamber for the Duke of Yorks Councell to have acceſſe to him, becauſe called into the Chamber by Privy Seale, &c. Rot. par. 32 H.6. m. 10.

An exemplification of a complaint by Richard Heron againſt John Prout, Coram rege & conſiliariis ſuis in Camera ſtellata, for a great miſdemeanour concerning Wools. Par. 3 E.4. part. 1.

Anno 8 E.4. proceeding by Engliſh bill, anſwer, replication, &c. Coram rege & Concilio. Rot. petit. 8 E.4.

Anno 20 E.4. a ſentence in the Star-chamber for turbulent and undue elections between the Abbot of Bury and the inhabitants. Rot. par. 20 E.4. part. 2.

We have omitted many other Records, but becauſe they be of like nature, we have contented our ſelfe with theſe. And now we will conſult with our Book caſes and Reports of law: wherein either coram rege & concilio, or coram Rege & concilio in camera ſtellata, is named.

39 E.3. fo. 14. 19 aſſ. pla. 40 aſſ. 38. 13 E.4. 9. in camera ſtellata. Vid. 27 E.3. cap. 1. 3. 21 E.4. 71. in camera ſtellata. 2 R.3. fo. 2. & 11. in camera ſtellata. 1 H.7. 3. in camera ſtellata. This Court in ancient times ſat but rarely, for three cauſes. Firſt, for that enormious and exorbitant cauſes which this Court dealt withall onely in thoſe dayes rarely fell out. Secondly, this Court dealt not with ſuch cauſes, as other Courts of ordinary juſtice might condignely puniſh, ne dignitas hujus curiæ viliſceret. Thirdly, it very rarely did ſit, leſt it ſhould draw the Kings Privy Councel from matters of State, pro bono publico, to hear private cauſes, and the principall Judges from their ordinary Courts of Juſtice. *Book caſes and Reports of law.*

3 H.7.ca.1.

That which now is next to be considered in serie temporis is the statute of 3 H.7. The Letter whereof followeth:

21 H.8.cap.20. The president of the Kings Councell added.

It is ordained that the Chancelour and Treasurer of England, and the Keeper of the Kings Privy Seal, or two of them calling to them a Bishop and a Temporal Lord of the Kings most honourable Privy Councell, and the two Chief Justices of the Kings Bench and Common Pleas for the time being, or other two Justices in their absence upon bill or information put to the said Lord Chancelour or any other against any person for unlawfull maintenance, giving of liveries, signs and tokens, and reteiners by Indentures, promises, oaths, writings or otherwise, imbraceries of his subjects, untrue demeaning of Sheriffs in making of pannels, and other untrue returnes by taking of money, by injuries, by great riots, and unlawfull assemblies, have authority to call before them by Writ or Privy Seale the said misdoers, and they and other by their discretion, by whom the truth may be knowne to examine, and such as they find therein defective, to punish them after their demerits, after the forme and effect of statutes thereof made in like manner and forme as they should, and ought to be punished, if they were thereof convict after the due order of law.

Camden Brit.

Camera stellata authoritatem prudentissimus princeps Henricus septimus ita Parliamentaria adauxit & constabilivit, nonnulli primum instituisse falso opinantur.

Upon this statute and that which formerly hath been said, these three conclusions doe follow. The first conclusion is, that this Act of 3 H. 7. did not raise a new Court; for there was a Court of Star-chamber, and all the Kings Privy Councell Judges of the same. For if the said Act did establish a new Court, then those foure or any two of them be only Judges, and the rest that they should call to them should be but assistants, and sidants, and no Judges: for the statute of 31 E. 3. cap. 12. which raiseth a new Court, and before new Judges, is introductory of a new law, by having conusance of error in the Exchequer, which shall be reversed in the Exchequer Chamber before the Chancelour and Treasurer, or calling to them two Judges, there the Chancellour and Treasurer are only Judges in the writ of Error, and so in the like. But it is clear that the two Justices in the Star-chamber are Judges, and have voices, as it hath been often resolved, and daily experience teacheth. And further to cleare this point, if the Justices should be but assistants and no Judges in the Star-chamber, for that they are to be called, &c. then, and for the same reason should neither Lord Spirituall nor Temporall, nor other of the Privy Councell be Judges, nor have voices in the Court of Star-chamber. And therefore the sudden opinion in 8 H.7. and of others not observing the said distinction between Acts Declaratory of proceedings in an ancient Court, and Acts Introductory of a new law in raising of a new Court, is both contrary to law, and continuall experience.

8 H.7.13. Plow. Com.393.

The second conclusion is, that the Act of 3 H.7. being in the affirmative is not in some things pursued. For where that Act directeth that the Bill or Information should be put to the Lord Chancelour, &c. all bils and informations in that Court are constantly and continually directed to the Kings Majesty, as they were before the said Act; and it is a good rule, that where the Act of 3 H.7. is not pursued, there (if there be many judiciall presidents in another sort) they must have warrant from the ancient Court, and yet it is good (as much as may be) to pursue this Act, there being no greater assurance of jurisdiction then an Act of Parliament. And where there be no such presidents, then the statute as to the Judges must be pursued: and that was the reason that in

default of others, Sir Chriſtopher Wray Chief Juſtice of England for a time was made Lord Privy Seal to ſit in the Star-chamber, Ne curia deficeret in juſtitia exhibenda.

Thirdly, that this Act being (as hath been ſaid) in the affirmative, and enumerating divers particular offences, albeit (injuries) is a large word, yet that Court hath juriſdiction of many other, as is manifeſt by authority, and daily experience, and this muſt of neceſſity be in reſpect of the former juriſdiction.

Fourthly, this Act in one point is introductory of a new law, which the former Court had not, viz. to examine the Defendant, which being underſtood after his anſwer made, to be upon oath upon interrogatories, which this ancient Court proceeding in criminall cauſes had not, nor could have but by Act of Parliament, or preſcription, the want whereof eſpecially in matters of frauds and deceits (being like birds cloſely hatched in hollow trees) was a meane that truth could not be found out, but before the Statute the anſwer was upon oath.

Fifthly, where it is ſaid in this Act, And to puniſh them after their demerits after the form and effect of ſtatutes made, &c. The Plaintiffe may chooſe whether he will inform upon ſuch ſtatutes as this Act directeth, or for the offence at the Common law, as he might have done before this Act: which proveth that this Act taketh not away the former juriſdiction.

6. Laſtly, that the juriſdiction of this Court dealeth not with any offence, that is not malum in ſe, againſt the Common law, or malum prohibitum, againſt ſome Statute.

It is to be obſerved that neither the ſtatutes of 37 E. 3. ca. 18. 38 E. 3. cap. 9. 42 E. 3. ca. 3. 17 R. 2. ca. 6. nor any other ſtatute taketh away the juriſdiction of any ſetled Court of Juſtice, neither is the Court of Star-chamber named in any of them, and yet was it a Court then and before that time.

Divers ſpeciall Acts of Parliament have given alſo juriſdiction to this Court, viz. 12 R. 2. ca. 11. 2 R. 2. cap. 5. 13 H. 4. cap. 7. 33 H. 8. cap. 1. 4 & 5. Ph. & Mar. cap. 8. 5 Eliz. ca. 9, 10. & cap. 14. 27 Eliz. cap. 4.

¶ *The Juriſdiction of this Court.*

And ſeeing the proceeding according to the laws and cuſtomes of this Realm cannot by one rule of law ſuffice to puniſh in every caſe the exorbitancy and enormity of ſome great horrible crimes and offences, and eſpecially of great men, this Court dealeth with them, to the end that the medicine may be according to the diſeaſe, and the puniſhment according to the offence, Ut pœna ad paucos, metus ad omnes perveniat, without reſpect of perſons, be they publique or private, great or ſmall.

As for oppreſſion, and other exorbitant offences of great men, (whom inferiour Judges and Jurors (though they ſhould not) would in reſpect of their greatneſſe be afraid to offend) bribery, extortion, maintenance, champerty, imbracery, forgery, perjury, diſperſers of falſe and dangerous rumours, newes, and ſcandalous libelling, falſe and partial miſdemeanours of Sheriffes and Bailiffes of liberties, frauds, deceits, great and horrible riots, routs, and unlawfull aſſemblies, ſingle combats, challenges, duels, and other haynous and extraordinary offences and miſdemeanors; but ordinary, and ſuch offences as may be ſufficiently and condignly puniſhed by the proceeding of the Common laws, this Court leaveth to the ordinary Courts of Juſtice and dealeth not with them, ne dignitas hujus curiæ vileſceret, as before is ſaid.

Camden Brit. 130. *In Camera ſtellata tractantur criminalia, perjuria, impoſturæ, dolus malus, ex eſſu, &c.*

The proceeding in this Court is by bill or information, by examination of the Defendant upon Interrogatories, and by examination of witneſſes, and rarely ore tenus, upon the confeſſion of the party in writting under his hand, which he again muſt freely confeſſe in open Court, upon which confeſſion in open Court, the Court doth proceed. But if his confeſſion be ſet downe too ſhort, or otherwiſe then he meant, he may deny it, and then they cannot proceed againſt him but by Bill or information, which is the ſafeſt way.

For proceeding *ore tenus*, ſee bef r. Ro. Clauſ. 17 H. 6. John Fords caſe. Rot. Clauſ. 42 E. 3. the Abbot of Bruerns caſe. &c. *In notoriis ordo eſt ordine non juris non ſervare.*

The Informations, bills, anſwers, replications, &c. and Interrogatories are in Engliſh, and ingroſſed in parchment, and filed up. All the Writs and Proceſſe of the Court are under the Great Seal: The ſentences, decrees and Acts of

this Court are ingroſſed in a fair book with the names of the Lords and others of the Kings Councell and Juſtices that were preſent and gave their voices.

Paſc. 12 Ia. Reg. In an information in this Court by the Atturney Generall againſt Sir Stephen Procter, Birkenhead and others for conſpiracy againſt, and ſcandall of the Earl of Northampton, and Edward Lord Wootton two of his Majeſties Privy Councell: At the hearing of which cauſe there ſat eight in Court, and four of them condemned the Defendant: and the Lord Chancelour, the two Biſhops, and the Chancelour of the Exchequer acquited him. And the queſtion was, whether the Defendant ſhould be condemned or no: and herein it was moved by the Kings learned Councell, that when the voices be equall that in that caſe, of which part the Lord Chancelour was, on that ſide it ſhould be decreed, without regard, whether it was for the Plaintif or Defendant: And it was reſolved, that regularly, & de communi jure, in reſpect of the equality of the voices no ſentence could be given in that caſe, as it holdeth in the High Court of Parliament, and all other Courts, according to the old rule, Paribus ſententiis reus abſolvitur. And therefore the Preſidents of this Court were to be ſearched; for except preſidents could make a difference between this Court and others, the Defendant could not be ſentenced. Whereupon the Court referred this queſtion to the two Chief Juſtices, that they calling unto them the Kings learned Councell to view preſidents, whether by the cuſtome of this Court the Common rule in other Courts is altered. Before whom in the preſence of the Kings learned Councell two preſidents were produced for proof of the ſaid cuſtome, viz. one Termino Hil. Anno 39 Eliz. betweene Gibſon Plaintif, and Griffith and others Defendants: wherein the complaint was for a Riot. And upon hearing of the cauſe eight ſat in Court, and four gave their ſentence that the Defendants were guilty, and the other four, whereof the Lord Chancelour was one, did acquite the Defendants, and no ſentence of condemnation was ever entred. But the Juſtices took it, that that preſident tended not to prove any ſuch cuſtome, for it agreed with the rule in other Courts.

Erodius fo. 112.

Hil. 39 Eliz. in Camera ſtellata Gibſons caſe.

Another preſident was ſhewed, Termino Hil. 45 Eliz. in an Information by the Queens Atturney Generall againſt Bathern and others for forging of a Will, &c. Upon the hearing of the cauſe, the preſence conſiſting of eight, whereof four gave ſentence againſt the Defendant for forgery, and to be puniſhed according to the ſtatute of 5 Eliz. the other four, whereof the Lord Chancelour was one, found him guilty of a miſdemeanour, and not of the forgery, and impoſed a fine of five hundred pound onely, and impriſonment, and that was entred according to the Lord Chancelours voice. But no rule of Court was ſhewed for entring thereof in that manner: ſo as it appeared not that it was ever moved, or debated in Court, and in that caſe all concluded againſt the Defendant, and it is but one preſident. Now whether this one, being ſuch a one as it is, and ſo late, be ſufficient to alter the generall law and courſe of all other Courts, I leave to the judgment of this honourable Court: And ſentence was never given againſt Sir Stephen Procter agreeable to the generall rule in other Courts. See Rot. Parl. 8 H. 6. nu. 28.

Hil. 45 El. in Camera ſtellata, Batherns caſe.

Mic. 36 & 37 El. Lawrence Hide and Henry Hide Eſquires, exhibited a bill of complaint againſt George Coriet and others upon the ſtatute of 32 H. 8. cap. 9. for unlawfull maintenance; and complained for three ſeverall Leaſes for certain yeares of the Parſonage of Dynton in the County of Wiltes. whereof the Leſſor nor any of his Anceſtors were in poſſeſſion within a year before, &c. and purſued the ſtatute: Upon which part of the Bill (for the Bill concerned riots and other things) the Defendant demurred in law, and the cauſes of the demurrer were. Firſt, that by the ſaid Act this Court had no juriſdiction of this cauſe upon this ſtatute, becauſe that the Act which is introductory of a new law did not give juriſdiction to this Court, but the ſuit muſt be in the Courts of the Common law upon this Act, which (ſaid they) alſo appeared, in that in the remedy given by the Act in this clauſe, In which action, bill, plaint, or informa-

tion,

tion no eſſoign, protection, wager of law or injunction ſhall be allowed, and that no eſſoign, &c. did lie in this Court. The ſecond objection was, This Court had no power to give the Plaintif remedy to have execution in this Court of the penalty given by this Act. Whereunto upon great adviſement it was anſwered and reſolved. As to the firſt: that the ſtatute did give juriſdiction to this Court, for it is one of the Kings Courts, &c. intended in the Act: and the ſtatute of 3 H. 7. declareth that this Court hath juriſdiction of maintenance, and this Act of 32 H. 8. doth adde but a greater penalty: and as to the clauſe of eſſoin, &c. it muſt be conſtrued reddendo ſingula ſingulis, &c. for as no eſſoin, &c. lieth in this Court, ſo no injunction is awarded in the Court of Common Pleas, &c. As to the ſecond: It was reſolved that this Court had power in this caſe to grant execution of the penalty inflicted by this Act, as in a like caſe had been done, in the caſe of James Taverner. And both theſe points had formerly been reſolved in this Court, 14 Maii. 27 Eliz. between Robert Bradſhaw Eſquire Plaintif, and Robert Charnock Eſquire Defendant, upon this ſtatute, and the caſe decreed accordingly, and a Commiſſion awarded out of this Court, to enquire of the value, &c. And for theſe cauſes by the rule of the whole Court, the demurrer was over-ruled, and the Defendant ordered to anſwer.

Dier Mich. 6 & 7 Eliz. fo. 236.

Dier 15 El. 323. in Camera ſtellat' Taverners caſe. Paſc. 27 El. in Camera ſtellata. Charnock's caſe.

This Court ſitteth twice in the week in the Term time, viz. on Wednesdayes, and Fridayes, except either of thoſe dayes fall out to be the firſt or laſt day of the Terme, and then the Court ſitteth not, but it conſtantly holdeth the next day after the Terme ended: but if any cauſe be begun to be heard in the Terme time, and for length or difficulty cannot be ſentenced within the Terme, it may be continued and ſentenced after the Terme.

¶ *The dignity of this Court.*

It is the moſt honourable Court (our Parliament excepted) that is in the Chriſtian world, both in reſpect of the Judges of the Court, and of their honourable proceeding according to their juſt Juriſdiction, and the ancient and juſt orders of the Court. For the Judges of the ſame are (as you have heard) the Grandees of the Realm, the Lord Chancelour, the Lord Treaſurer, the Lord Preſident of the Kings Councell, the Lord Priuy Seal, all the Lords Spirituall, Temporall, and others of the Kings moſt honourable Priuy Councell, and the principall Judges of the Realm, and ſuch other Lords of Parliament as the King ſhall name. And they judge upon confeſſion, or depoſition of witneſſes: And the Court cannot ſit for hearing of cauſes under the number of eight at the leaſt. And it is truly ſaid, Curia Cameræ ſtellatæ, ſi vetuſtatem ſpectemus, eſt antiquiſſima, ſi dignitatem, honoratiſſima. This Court, the right inſtitution and ancient orders thereof being obſerved, doth keep all England in quiet.

¶ *The Judges of this Court.*

Camb. ubi ſup.

Albeit the ſtile of the Court be Coram Rege & Concilio, yet the Kings Councell of that Court hear and determine cauſes there, and the King in judgment of law is alwayes in Court. As in the Kings Bench the ſtyle of the Court is Coram Rege, and yet his Juſtices who are his Councell of that Court doe heare and determine, and ſo Coram Rege in Cancellaria, and the like.

So this Court being holden Coram Rege & Concilio, it is or may be compounded of [a] three ſeverall Councels. That is to ſay, of the Lords and others of his Majeſties Priuy Councell, alwayes Judges without appointment, as before it appeareth. 2. [b] The Judges of either Bench and Barons of the Exchequer are of the Kings Councel for matter of law, &c. and the two Chief Juſtices, or in their abſence other two Juſtices are ſtanding Judges of this Court. 3. The Lords of Parliament are properly De [c] magno concilio regis, but neither theſe, being not of the Kings Priuy Councell, nor any of the reſt of the Judges or Barons of the Exchequer are ſtanding Judges of this Court.

[a] See the 1. part of the Inſtitutes Sect. 164. *Verb. veigne les Burgeſſes al Parliament.* 4 E. 3. 2. 3 aſſ. pl. 15.

[b] 39 E. 3. 5. 19 E. 3. Judgement. 174. W. 1. cap. 1. 17 E. 2. *Stat. de templariis.*

16 R. 2. *Stat. de Premunire.* 43 Aſſ. pl. 15. Regiſt. 124, 125. 191. 27 H. 6. 5. 2 R. 3. 10. [c] 27 Aug. 5 H. 4. in the Exchange between the King and the Earl of Northumberland, *in Turre* 37 E. 3. ca. 18. &c. Note the Parliament is called *Commune concilium.*

¶ *The name of this Court.*

It is now, and of ancient time hath been called the Chamber of the [d] Stars, the Star-

[d] 41 E. 3. ubi ſup.

*In many of the Records before cited.

† 25 H. 8. c. 1. Lambard.

Star-chamber, the † ſtarred Chamber, in reſpect the roof of the Court is garnithed with golden ſtars. Some have imagined that it ſhould be called the Star-chamber, becauſe crimina ſtellionat' are there handled: Others of this Baron word Steeran, to ſteer or rule as doth the Pilot, becauſe this Court doth ſteer and governe the ſhip of the Commonwealth. Others, becauſe it is full of windowes: but the true cauſe of the name is, becauſe, as is aforeſaid, the roof is ſtarred. In all records in Latine, it is called Camera ſtellata.

Sir Tho. Smith. L. b. 2 ca. 4.

¶ *The proceſſe.*

The proceſſe in this Court is Subpœna, Attachment, proceſſe of rebellion, &c. all under the Great Seal.

¶ *Officers of the Court ſworn.*

In this Court there is the Clerk of the Councell, which is an office of great account, and truſt, for he is to receive, endorſe, enter, keep, and certifie the bils, pleadings, records, orders, rules, ſentences and decrees of the Court; and I find that in former times men of great account have had that office in this Court: as to give you a little taſt thereof: King H. 6. by his Letters Patents, 15 July Anno regni ſui 22. granted the ſame to Thomas Kent Doctor of the Law for his life, calling him Clericum concilii noſtri, and ſoon after ſwore him of his Privy Councell. King H. 7. Anno 1. of his reign, granted the ſame office to John Bladeſwell Doctor of laws for tearm of his life: But hereof this little taſt ſhall ſuffice.

Eccleſiaſticus 20. 8. *Qui poteſtatem ſibi ſumit injuſtè, odietur.*

Laſtly, it remaineth to be ſeen what jurisdiction this Court hath in puniſhment, and where, and in what caſes this Court may inflict puniſhment by Pillory, papers, whipping, loſſe of ears, tacking of ears, ſtigmata in the face, &c. (For it extendeth not to any offence that concerns the life of man or obtruncation of any member: the ears onely excepted, and thoſe rarely and in moſt hainous and deteſtable offences.) But herein the ſureſt rule is, that ſeeing it is an ancient Court, the preſidents of the Court are to be followed, and the rather for that the Court conſiſteth of ſuch learned and honourable Judges. And novelties without warrant of preſidents are not to be allowed: generally ſome certain rules are to be followed, eſpecially where no preſidents are extant in the caſe. * Quod arbitrio Judicis relinquitur, non facile trahit ad effuſionem ſanguinis: For generall Acts of Parliament which inflict puniſhment, viz. for forfeiture de corps & de avoir, &c. theſe are expounded not to extend to life, or member, but to impriſonment, &c.

* See *Statut. de moneta temps* E. 1. 35 E. 1. *de Carliſle.* 20 E. 3. c. 4. Vid. 23 El. c. 2. And note where he ſhall loſe his eares for defamation of the Queen.

See the Firſt part of the Inſtitutes, Sect. 745. Verb. Felony. Majore pœna affectus, quam legibus ſtatut' eſt, non eſt infamis. Pœna gravior ultra legem poſita æſtimationem conſervat. Confeſſus in jure pro judicato habetur, cum quodammodo ſua ſententia damnatur. Cum confitente ſponte mitius eſt agendum.

In hac Curia non agitur de delictis ordinariis, ne dignitas hujus curiæ vileſceret, Quicquid Judicis authoritati ſubjicitur, novitati non ſubjicitur.

CAP.

CAP. VI.

A Court for redreſſe of delayes of Judgements in the Kings great Courts.

THis Court is raiſed by the ſtatute of 14 E.3. which followeth in theſe words. 14 E.3.cap.5. ſtat.1.

Item, Becauſe divers miſchieves have happened of that, that in divers places, as well in the Chancery, as in the Kings Bench, the Common Bench, and in the Exchequer, before the Juſtices aſſigned, and other Juſtices to hear and determine deputed, the judgements have been delayed, ſometimes by difficulty, ſometimes by divers opinions of the Judges, and ſometimes for ſome other cauſe: It is aſſented, eſtabliſhed, and accorded, that from henceforth at every Parliament ſhall be choſen a Prelate, two Earls, and two Barons, which ſhall have commiſſion and power of the King to heare by Petition delivered unto them the complaints of thoſe that will complaine them of ſuch delayes and grievances made, and they ſhall have power to do come before them at Weſtminſter, or elſewhere, where the places or any of them ſhall be, the tenor of Records and Proceſſes of ſuch judgements ſo delayed, and to cauſe the ſame Juſtices to come before them, which ſhall be then preſent, to heare their cauſe and reaſons of ſuch delayes: which cauſe and reaſons ſo heard by * good advice of themſelves, the Chancellor, Treaſurer, the Juſtices of the one Bench and of the other, and other of the Kings Councell, as many and ſuch as ſhall ſeem convenient, ſhall proceed to take a good accord, and make a good judgement: and according to the ſame accord ſo taken, the tenor of the ſame Record, together with the judgement which ſhall be accorded, ſhall be remanded before the Juſtices, before whom the Plea did depend; and that they ſhall give judgement according to the ſame Record: and in caſe it ſeemeth to them that the difficulty be ſo great, that it may not well be determined without aſſent of the Parliament, that the ſaid tenor or tenors ſhall be brought by the ſaid Prelate, Earles and Barons in the next Parliament, and there ſhall be a finall accord taken what judgement ought to be given in this caſe, and according to this accord it ſhall be commanded to the Judges before whom the Plea did depend that they ſhall proceed to give judgement without delay.

Rot. Parl. 2 R.2. nu.63. confirmed by Parliament.

Judgements delayed.

* Nota, by good advice of the Chancellour, Treaſurer, and Juſtices.

Good accord.

Vide Regiſt. fo.124.b. Rex Iohanni de B.Millti, &c.

Before the making of this ſtatute, delay of Judgements was forbidden both by the Common law, and by Acts of Parliament. By the Common law, 1. It is required, that Plena & celeris juſtitia fiat partibus, &c. not plena alone, nor celeris alone, but both plena & celeris. All Writs of Precipe quod reddat, are, Quod juſtè et ſine dilatione reddat, &c. All judiciall Writs are ſine dilatione, &c. 2. Where did and yet doth lie a Writ de procedendo ad judicium, when the Juſtices or Judges of any Court of Record, or not of Record, delayed the party plaintiffe or defendant, demandant or tenant and would not give judgement: and thereupon an Alias, Plur, and an Attachment, &c. doth lie. And the words of the Writ

Regiſt.131.a. F.N.B.23.c. And ſo upon Conuſance granted.

Regiſt.fo.22. F.N.B.153.b.&c. Cuſt.de Norm. cap.27.

Writ be, Quia redditio judicii loquelæ quæ eſt coram vobis, &c. de quadam tranſgreſſione eidem A. per præfat' B. illata, ut dicitur diuturnam cepit dilationē ad grave damnum ipſius A. ſicut ex querela ſua accepimus; Vobis præcipimus quod ad judicium inde reddendum cum ea celeritate quæ ſecundum legem & conſuetudinem regni noſtri procedas, &c.

Diuturna dilatio.

Regiſt. fo. 18. F.N.B. fo. 20. a. &c.

3. **Likewiſe when Juſtices or Judges of any Court of record, or not of record gave Judgement, and delayed the party of his execution, the party grieved may have a Writ** De executione judicii; **by which Writ the Juſtices or Judges are commanded,** Quod executionem judicii nuper reddit', &c. de loquela quæ fuit, &c. per breve noſtrum, &c. ſine dilatione fieri fac'. **And thereupon an** Alias, Plur' **and Attachment, &c. doe lie.**

See hereafter. ca. Exchequer and Exchequer Chamber.

4. **By the meeting together upon adjournment of the cauſe out of the Court, where the cauſe dependeth, &c. All the Judges, &c. which now we call an Exchequer Chamber cauſe, warranted by the Common law and ancient preſidents before this ſtatute: and the frequent uſe of this Court of Exchequer chamber hath been the cauſe that this Court upon the Act of 14 E. 3. hath been rarely put in ure.**

2 E. 3. fo. 7. Ellys Callers caſe. Bract. lib. 1. ca. 2. Rot. Parl. 14 E. 3. nu. uſt. Sir Geff. Santons caſe.

5. **By the Kings Writ comprehending** quod ſi difficultas aliqua interſit, **that the Record ſhould be certified into the Parliament. and to adjorne the parties to be there at a certain day.** Si obſcurum & difficile ſit judicium, ponantur judicia in reſpect' uſque magnam curiam. **An excellent Record, whereof you may read in the Parliament holden at Weſtminſter the Tueſday after the tranſlation of** Becket, Anno 14 E. 3.

Mag. Cart. cap. 29.

Secondly, by Acts of Parliament, Nulli vendemus, nulli negabimus, aut differemus juſtitiam vel rectum.

That it ſhall not be commanded neither by the Great-ſeale, nor by the Little-ſeale, nor by Letters, nor any other cauſe to delay right: and albeit ſuch commandement come, &c. that by them the Juſtices ſurceaſe not to doe right in no manner. Vide 2 E. 3. cap. 8. 14 E. 3. cap. 14. 18 E. 3. ſtat. 3. 2 R. 2. **a ſtatute not in print,** Rot. Parl. nu. 51, **whereby it is enacted, that no Juſtice ſhall ſtay juſtice for any Writ, Letter of the Great-ſeal or Privy-ſeal, or other commandement whatſoever againſt the laws and ſtatutes before that time made.** Rot. Par. 2 H. 4. nu. 64. Anno 5 H. 4. nu. 33. **all which are declaratory of the Common law.** * **And upon the ſaid Act of** 2 E. 3. **a Writ is framed, directed to the Juſtices, by which they are commanded,** Quod ad juſtitiam partibus, &c. faciend' virtute alicujus mandati de magno ſigillo, & parvo ſigillo vobis direct' ſeu dirigend' nullatenus ſuperſedeatis, &c. **And thus much for the Common law and Acts of Parliament.**

2 E. 3. fo. 3. per Aldham. 14 E. 3. jour. 24. 18 E. 3. 47. 57. 31 E. 3. an. 161. 39 E. 3. 37. 11 H. 4. 5. 76. 9 H. 6. 58. b. 5 E. 4. 132. Forteſc. cap. 5. F.N.B. 240. d. * Regiſt. fo. F.N.B. 240. d.

This ſtatute of 14 E. 3. cap. 5. **conſiſteth of two generall parts,** viz. **the Preamble and the Body of the Act. In the Preamble three things are to be obſerved. 1. That (notwithſtanding the proviſion of the Common law) miſchiefs doe happen by delay of judgements. 2. It enumerateth in what Courts theſe delayes do happen,** viz. **in the Chancery, in the Kings Bench, the Common Bench, and the Exchequer, the Juſtices aſſigned, and other Juſtices to heare and determine deputed. 3. It declareth how theſe delayes have grown,** viz. **ſometime for difficulty of the matter in law, ſometime in diverſity of opinion of the Judges, and ſometimes for ſome other cauſe, that is, by Commandements, Letters, or Meſſages of the King or Great Men, &c. In the Body of the Act we have collected many obſervations. 1. That at every Parliament there ſhall be choſen a Prelate, two Earls, and two Barons, (or one Biſhop, two Earles, and two Barons.)** viz. **At this Parliament were choſen, 1.** John Stratford **Archbiſhop of Canterbury, (a man famous for learning, loyalty, and vertuous living.) 2.** Rich. Fitzalan **Earle of Arundell, a man of great wiſdome, prowes, and integrity. 3.** William Clynton **Earle of Huntingdon, and Admirall of England, a man lately before advanced for his ſingular valour, wiſdom, and vertue. 4. The Lord** Wake **of Lidel: and 5.** Ralph **Lord Baſſet of Drayton, two of the moſt renowned Barons of England.** Quos omnes honoris cauſa nomino.

2. **This**

2. This Act doth appoint that the Prelate, two Earls, and two Barons are to have a Commiſſion and power of the King under the Great Seal (and none of them can be abſent) which Commiſſion is to endure untill the next Parliament.

3. This Commiſſion and power conſiſteth on ten parts. 1. Ad audiendum, to heare the petition delivered to them, the complaints of thoſe that will complain them of ſuch delayes or grievances made. 2. Ad venire faciend' to come before them at Weſtminſter, or elſewhere, the tenor of the Records and Proceſſes of ſuch Judgements ſo delayed; and this is to be done by the Kings Writ of Certiorari. 3. Ad venire faciend', to cauſe the ſame Juſtices to come before them. 4. Ad audiend' ſuas rationes & cauſas talium dilationum, to heare their reaſons and cauſes of ſuch delayes which ought to be entred of Record. 5. Which cauſes and reaſons ſo heard. Ad procedendum, to proceed to make a good accord. 6. But this muſt be done not onely by themſelves, but by the good advice of certain aſſiſtants appointed by the Act, viz. the Chancelour, Treaſurer, the Juſtices of the one Bench and the other, and other of the Kings Councell, as many, and ſuch as they ſhall think convenient. 7. Ad capiendum, to take a good accord of the aſſiſtants. 8. Ad faciendum, to make a good judgement. 9. Ad remandandum, to remand before the Juſtices, before whom the plea did depend, the tenor of the ſaid Record, together with the judgement that ſo ſhall be accorded. Laſtly, that thoſe Juſtices ſhall preſently give judgement according to the ſaid Record.

A Commiſſion granted in 18 E. 3. grounded upon this ſtatute, and referring to the ſame being enacted, as there it appeareth, at a Parliament holden die Mercurii proxim' poſt medium Quadrageſimæ Anno 14 E. 3. regni Angliæ & Franciæ primo, there being two Parliaments in that yeare, which you may read, being worthy of obſervation, for it is a good expoſition of this Act. Rot. Pat. 18 E. 3. 2 part.

4. It is further provided by the ſaid Act of 14 E. 3. that in caſe it ſeemeth to them, that the difficulty is ſo great, that it cannot well be determined without aſſent of Parliament, that the tenor or tenors ſhall be brought by the ſaid Prelate, Earls, and Barons unto the next Parliament. and there ſhall finall accord be taken what judgement ſhall be given in this caſe.

[a] It is better that the demandant be delayed, then the tenant diſherited, or that the Law be altered. Shard. we cannot nor will delay any man in reſpect of our Oath.

[b] The Juſtices ought to delay no man in the name of the King where the King hath no right. The demandant ſhall not be legally delayed twice for one cauſe.

[c] Delay in a Quare impedit, though it be by eſſoign, is a diſturbance. [d] Semper fur eſt in mora. [e] In circuitu impii ambulant.

[f] In divers caſes the party grieved ſhall have an action for unjuſt delay.

[g] Tolle moram, ſemper nocuit differre paratis.

But ſeeing neither the Common law, nor any of the Acts of Parliament doe extend to Eccleſiaſticall Courts, it is then demanded, What if an inferiour Ordinary will refuſe, or delay to admit and inſtitute a Clerk preſented by the right Patron, to a Church within his Dioceſſe, or the like: Or delay, or refuſe to give ſentence in a caſe depending before him? It is anſwered, that the Archbiſhop of the Province may grant his [h] Letters under his Seale to all and ſingular Clerks of his Province, to admonith the Ordinary, within nine dayes to performe that which by Juſtice is deſired, or otherwiſe to cite him to appeare before him or his Officiall at a day in thoſe Letters prefired, and to cite the party that hath ſuffered ſuch delay, then and there likewiſe to appeare, and further to intimate to the ſaid Ordinary, that if he neither performe that which is enjoyned, nor appear, be himſelfe without further delay will performe the juſtice required. Or in the former of the ſaid caſes, the party delayed may have his Quare imp. but that is thought not to be ſo ſpeedy a remedy.

[a] *Rules concerning delayes.*
[a] 18 E. 3. 54. a.
13 H. 4. 4.
24 E. 3. 64. a.
[b] 4 E. 3. 2. a.
22 H. 6. 39 per Newton.
10 E. 3. 57.
40 E. 3. 22 &c.
[c] 4 E. 3. 14
6 E. 3. 4.
[d] Fraction.
[e] Pſal. 12. 9.
[f] 44 E. 3. 4.
18 E. 3. 12, 13.
20 H. 6. 10.
21 E. 4. 22, 23.
F. N. B. 96. f. 97. b.
[g] *Ovidius.*
[h] This is called *duplex querela*: neceſſary to be known for finding of Inſtitutions, &c.

CAP. VII.

The Court of Kings Bench, *Coram Rege*.

Lib. 3. cap. 7. fo. 105. b.

BRacton **doth make in few words a notable expreſſion of this Court.** Habet Rex plures Curias in quibus diverſæ actiones terminantur, & illarum curiarum habet unam propriam, ſicut Aulam regiam, & Juſticiarios capitales qui proprias cauſas Regias terminant, & aliorum omnium per querelam, vel per privilegium, ſeu libertatem. **And ſoon after ſpeaking of the Juſtices of this Court ſaith**:

Fo. 108. a. Item Juſticiariorum quidam ſunt capitales, generales, perpetui, & majores à latere regis reſidentes, qui omnium aliorum corrigere tenentur injurias, & errores.

And Britton **ſaith**: In droit des Juſtices que ſon aſſignes de nous ſuer & tener noſtre lieu ou q̃ nous ſeons en Angliterre. * Voilons que eux ciant conuſance de amender faux judgements, & de terminer appeales & auters treſpaſses faitz enconter noſtre peace, & * enconter noſtre juriſdiction, & lour record ſe eſteant ſolonq; ceo que nous manderons per noſtre brē.

* Nota.

* A granter prohibitions.

Fleta **in deſcribing this Court ſaith**: Habet & Rex Curiam ſuam & Juſticiarios ſuos tam milites quam clericos locum ſuum tenentes in Anglia, coram quibus, & non alibi niſi coram ſemetipſo & concilio ſuo vel Auditoribus ſpecialibus falſa judicia & errores Juſticiariorum revertuntur & corriguntur: ibidem etiam terminantur brevia de appellis, & alia brevia ſuper actionibus criminalbus & injuriarum contra pacem regis illatarum impetrata, & omnia, in quibus continetur ubi tunc fuerimus in Anglia.

Lib. niger in Scaccario cap. 4.

In the Black Book of the Exchequer, it is thus ſaid of the Chief Juſtice of this Court: Capitalis Juſtitia præſidet primus in regno. **Out of theſe three ancient Authours we obſerve theſe fit concluſions.**

* Note this word.

Firſt, where Bracton **ſaith**, Habet Rex plures curias in quibus diverſæ actiones * terminantur. **Hereby, and in effect by** [a] Britton, **this concluſion followeth, that the King hath committed and diſtributed** all his whole power of judicature **to ſeverall Courts of Juſtice, and therefore the judgement muſt be.** Ideo conſideratum eſt per Curiam. **And herewith doe agree divers Acts of Parliament and Book caſes, ſome whereof, for illuſtration, we will briefly remember; and leave the judicious reader to the reſt.**

[a] See Britton f. 1. ſpeaking of the King, *Et pur ceo que nous ne ſuffiſons in noſtre proper perſon a oier et terminir touts querels del people. Avomus partie noſtre charge en pluſors parts come eſt ordeine, &c.* 20 E. 3. cap. 1.

[b] Sta. de Marlb. 52 H. 3. ca. 1. Vid. 4 H. 4. ca. 22.

[b] Proviſum, concordatum & conceſſum eſt, quod tam majores, quam minores juſtitiam habeant & recipiant in curia Domini Regis. [c] **That the lawes Eccleſiaſticall and Temporall were and yet are adminiſtred, adjudged, and executed by ſundry Judges, &c.** [d] Expedit etiam magiſtratus reipublicæ conſtitui, quia per eos qui juredicendo præſunt effectus rei accipitur; parum eſt enim jus in civitate eſſe, n ſi ſint qui poſſunt jura gerere.

[c] 24 H. 8. cap. 2. in effect.

[d] Bract. lib. 1. ca. 5. fol. 3. b.

[e] For the pleaſure of God and quietneſſe of our ſubjects, as to ſave our conſcience, and to keep our Oath, by the aſſent of our Great men and other of our Councell, we have commanded our Juſtices, that they ſhall from henceforth doe even law and execution of right to all our Subjects, rich and poor, without having regard to any perſon, without letting to doe right for any Letters or commandement which may come to them from us, or from any other, or by any other cauſe.

[e] 20 E. 3. cap. 1. ſpeaking in the Kings perſon.

Agreeable to that great Canon of the law Anno 3 E. 1. **which we have tranſlated into Latine**: Rex præcipit quòd pax ſacroſanctæ Eccleſiæ & regni ſolidè cuſtodiatur & conſervetur in omnibus, quodq; juſtitia ſingulis tam pauperibus quam

W. 1. A. 3 E. 1. cap. 1. Fle. a. lib. 1. ca. 29.

divitibus

divitibus administratur, nulla habita personarum ratione. See the second part of the Institutes, W.1.cap.1.

1 H.4. the King hath committed all his power judiciall, some in one Court, and some in another, so as if any would render himselfe to the judgement of the King in such case where the King hath committed all his power judiciall to others, such a render should be to no effect. And 8 H.6. the King doth judge by his Judges (the King having distributed his power judiciall to severall Courts) And the King hath wholly left matters of judicature according to his lawes to his Judges. 8 H.4.fo.19. 8 H.6.20.& tit. Grant.F.5.

And albeit it be enacted that the Delinquent shall be fined at the will of the King, Non Dominus Rex in camera sua, nec aliter nisi per justiciarios suos (finem imponit) & hæc est voluntas regis, viz. per Justiciarios & legem suam, unum est dicere. 2 R.3.fol.11.

The second conclusion is, that in those dayes this Court of Kings Bench did follow the Court: and therefore Bracton calleth it Aulam regiam, because they sat in the Kings Hall. Britton calleth the Justices of this Court, Justices assignes de nous suer: and Fleta, ubi tunc fuerimus in Anglia.

The third is, that it is called the King Bench, and the Pleas thereof Coram rege: because in this Court (as Bracton saith) those Capitales justiciarii proprias regis causas terminant, and therefore the King himselfe cannot be Judge in propria causa.

The fourth is, that under these words [proprias causas] are included three things. First, all pleas of the Crowne; as all manner of treasons, felonies, and other pleas of the Crown which ex congruo, are aptly called propriæ causæ regis, because they are placita coronæ regis. Secondly, regularly to examine and correct all and all manner of errors in fact, and in law, of all the Judges and Justices of the * Realm in their judgements, proceste, and proceeding in Courts of record, and not onely in pleas of the Crown, but in all pleas, reall, personall, and mixt, (the Court of the Exchequer excepted, as hereafter shall appear.) And this is proprium quarto modo to the King in this Court: for regularly no other Court hath the like jurisdiction, and therefore may be well called propria causa regis. And these two be of high and soveraign jurisdiction. [a] Thirdly, this Court hath not onely jurisdiction to correct errors in judiciall proceeding, but other errors and misdemeanours extrajudiciall tending to the breach of the peace, or oppression of the subjects, or raising of faction, controversy, debate, or any other manner of misgovernment; so that no wrong or injury, either publick or private, can be done, but that this shall be reformed or punished in one Court or other by due course of law. As if any person be committed to prison, this Court upon motion ought to grant an Habeas corpus, and upon returne of the cause do justice and relieve the party wronged. And this may be done though the party grieved hath no priviledge in this Court. It granteth prohibitions to Courts Temporall and Ecclesiasticall, to keep them within their proper jurisdiction. Also this Court may baile any person for any offence whatsoever. And if a Freeman in City, Burgh, or Town Corporate be disfranchised unjustly, albeit he hath no priviledge in this Court, yet this Court may relieve the party, as it appeareth in James Bagges case, ubi supra, & sic in similibus.

Of these you may read in Glanvil lib.1. cap.2.&c. & lib. 10.cap.18. and in the third part of the Institutes *per totã*, & Stanf. *per totum*.

* And in Ireland of errors in the Kings Bench there. Lib.7. fo.18. F.N.B.22. 34 Ass.7. 39 E.3.Error 88.

[a] Lib.11.fo.98.

Iam. Bagges case. Vid.10 E.3.ca.3. Marshalsea.

Fourthly, this Court may hold plea by Writ out of the Chancery of all trespasses done Vi & armis, of Replevins, of * Quare impedit, &c.

F.N.B.89.91.

* Tr.19 E.3.coram rege Rot.56. Linc.

[b] See the second part of the Institutes, the 11 Chapter of Mag.Carta, Communia placita non sequantur curiam nostram.

[b] 2 part of the Institutes, Magna Carta.cap.11.

Fifthly, this Court hath power to hold plea by Bill for debt, detinue, covenant, promise, and all other personall actions, ejectione firmæ, and the like, against any that is in custodia Mareschalli, or any Officer, Minister, or Clerke of the Court: and the reason hereof is, for that if they should be sued in any other Court they should have the priviledge of this Court: and lest there should be a failer of Justice (which is so much abhorred in law) they shall be impleaded here by Bill, though these actions be common pleas, and are not restrained by the said Act

of Magna Carta, ubi ſupra. Likewiſe the Officers, Miniſters, and Clerks of this Court priviledged by law in reſpect of their neceſſary attendance in Court, may implead others by Bill in the actions aforeſaid. And all this appeareth by Bracton, who lived when Magna Carta was made, ubi ſupra: where he ſaith, Et aliorum omnium per querelam vel per privilegium ſive libertatem. And continuall experience concurreth with antiquity herein.

See the ſecond part of the Inſtitutes, ubi ſup. 27 H.3.coram Rege.Rot.9. *Hus & Haut.*

H. P. captus per querimoniam mercatorum Flandriæ & impriſonatus offert domino regi *Hus & Haut* in plegio ad ſtandum recto,& ad reſpondendum prædictis mercatoribus, & omnibus aliis qui verſus eum loqui voluerint, &c. This plea was after the ſtatute of Magna Carta, Anno 9 H. 3. Of theſe words *Hus & Haut*, two French words. *Hus* ſignifying an Elder tree, and *Haut* the ſtaffe of a Halbert, &c. I leave the conjecture that ſome have made thereof to themſelves: we think it was then common bail changed now to Do and Ro, and the rather for this word [offert.] And it is obſervable, that then putting in baile at one mans ſuit, he was in cuſtodia Mareſchalli to anſwer all others which would ſue him by Bill, and this continueth to this day. If any perſon be in cuſtodia Mareſchalli,&c.be it by commitment, or by Latitat, bill of Pid' or other Proces of law, it is ſufficient to give the Court jurisdiction: and the rather, for that the Court of Common pleas is not able to diſpatch all the ſubjects cauſes,if the ſaid actions ſhould be confined onely to that Court. And ſeeing none but Serjeants at law can practiſe in the Court of Common pleas, it is neceſſary that in this Court of Kings Bench Apprentices and other Counſellors of law might by experience inable themſelves to be called Serjeants afterwards; otherwiſe Serjeants muſt want experience,which is the life of their profeſſion. And the proceedings in that Court for ſo long time,& under ſo many honourable Judges and reverend Sages of the law, hath gotten ſuch a foundation,as cannot now without an Act of Parliament be ſhaken. And the errors in the Kings Bench cannot be reverſed (but in certain particular actions by the ſtatute of 27 Eliz.cap.8. wherein the jurisdiction of the Court is ſaved) but in the High Court of Parliament, as before in the Chapter of the Court of Parliament appeareth.

31 H.6.10.b.adjudge.

1 H.7.12. 14 H.7.14. 21 E.3.46. 11 H.4.49. in nativo habendo.

Sirthly, if a Writ in a reall action be abated by judgement in the Court of Common pleas, and in a Writ of Error the judgement is reverſed in this Court,and the Writ is adjudged good,this Court ſhall proceed upon this Writ, and is not reſtrained by Magna Carta, ubi ſupra, ne curia domini Regis deficeret in juſtitia exhibenda.

F.N.B.177. 30 aſſ.35. Aſſ. de mord.

This Court may hold plea in Aſſiſe of novel diſſeiſin without any patent, for it is querela and not placitum, and ſo not within theſe words communia placita, as it hath been expounded and warranted by continuall experience.

3 H.4.7.

A Scire fac' to repeal a Patent of the King may be brought in this Court. And where Fleta ſaith Niſi coram ſemetipſo & concilio ſuo, vel Auditoribus ſpecialib' falſa judicia ac errores juſticiariorum reverteruntur: It is to be known that all the Common law errors in the Court of Exchequer (being the proper Court of the King for his revenue and profit) were examinable before Commiſſioners appointed by the Kings Writ under his Great Seal,which Fleta here calleth Auditores ſpeciales. But now by the ſtatute of 31 E.3. the Chancelour and Treaſurer taking to them the Juſtices and other ſage perſons, ſuch as to them ſeemeth to be taken, ſhall examine the errors in the Exchequer, &c.

See more hereof in the Chapter of the Exchequer. 31 E.3.cap.12.

[a] In ancient time,when pleas were holden in Parliament, when the parties deſcended to iſſue, the Record was adjourned into the Kings Bench to be tried there.

[a] Rot.Par.18 E.1. nu.97. Placit. Int.10.de nov. Burgo & Regman, &c.

[b] See the ſtatute of W. 1. againſt prepoſterous hearings in this Court, and the expoſition of the ſame in the ſecond part of the Inſtitutes.

[b] W.1.cap.14. Againſt prepoſtercus hearings.

[c] By the ſtatute of Artic' ſuper Cart. the Chancelour and the Juſtices of the Kings Bench were to follow the Court: but notwithſtanding both the Chancery and the Kings Bench were at this time ſetled Courts, during the ſeverall

[c] Art. ſuper Cart. 28 E.1.cap.5. Glan. temps.H.2. lib.2. ca.6.& lib.11.ca.1. *Coram Juſticiis Domini Regis in Banco ſedentibus. Vid. adjudicat' coram Rege* in every Terme, from 1 E. 1. during all his reign in every ſeverall Term in the yeare. And in all thoſe times and Termes the Court of Chancery did ſit.

Termes

Terms of the yeer, as by infinite recoꝛds, both beꝛoꝛe and after this ſtatute doth appear. So as at this time they did not attend in the Kings Court, but when they were called, yet were accounted as parcell of the Kings houſhold as long as they followed the Court: but this cumberſome attendance wholly ceaſed in the reign of E. 3. and yet the Loꝛd Chancelour would have had his puꝛveyance, as if he had continued ſtill as one of the houſhold, untill he and all others, but thoſe of the Kings, Queens, oꝛ Pꝛinces houſhold onely, were reſtrained by Act of Parliament. 34 E.3.cap.2. 34 E.3.ca.2.

Alſo upon peruſall of the Recoꝛds in the reign of H.3. from the beginning of his reign untill the ending of it, this Court ſat in the Term time where the other Courts of Juſtice did ſit. And the pleas were ſtiled to be holden Coram Rege as to this day they are: And this appeareth by Fitzh. Abꝛidgement, in the titles of Corone, of Brief, of Waſt, &c. and by Bracton who in many places boucheth Judgements in the reign of H.3. in Terms Coram Rege. And this appeareth alſo in elder times: but hereof thus much ſhall ſuffice to pꝛove, that at the making of the ſaid Act of 28 E. 1. and long beꝛoꝛe this Court in Term times ſat with the Kings other Courts, and ſpecially foꝛ Pleas of the Crowne, &c. and that the ſaid Act is to be intended, that the Chancelour and the Judges of this Court ſhould attend the King and follow the Court when they were required. And ſo did the Chancery both of them being to ſome purpoſes but one Court, as it appeareth in the chapter of the Court of Chancery.

It is truly ſaid that the Juſtices de banco Regis have ſupꝛeam authoꝛity, the King himſelfe ſitting there as the law intends. They be moꝛe then Juſtices in Eire. 3 El.Dier 187. 27 Aſſ.p.1.

The Juſtices in this Court are the ſoveraign Juſtices of Oier and Terminer, Gaol-delivery, Conſeꝛvatoꝛs of the peace, &c. in the Realm. See the books in the margent, you ſhall find excellent matter of learning concerning the ſupꝛeam juriſdiction of this Court. 7 E.4.18. 4 H.7.18. 14 H.7. 21 li.9. fo.118.a & b. Seignior Sanchers caſe.

In this Court the Kings of this Realm have ſit in the High Bench, and the Judges of that Court on the lower Bench at his feet; but Judicature only belongeth to the Judges of that Court, and in his pꝛeſence they anſwer all motions, &c.

The Juſtices of this Court are the ſoveraign Coꝛoners of the Land, and theꝛefoꝛe where the Sheꝛif and Coꝛoners may receive appeals by bill, a Fortiori the Juſtices of this Court may doe it. 17 E.3.13.a. Lib.4.fo.57.in the Sadlers caſe. Pl.Com.262.

[a] So high is the authoꝛity of this Court, that when it comes and ſits in any County, the Juſtices of Eire, of Oier and Terminer, Gaol-delivery, [b] they which have conuſance, &c. doe ceaſe without any wꝛiting to them. But if any indictment of Treaſon oꝛ Felony in a foꝛaine County be removed beꝛoꝛe certain Commiſſioners of Oier and Terminer in the County where this Court ſits, yet they may pꝛoceed, becauſe this Court (foꝛ that this indictment was not removed beꝛoꝛe them) cannot pꝛoceed foꝛ that offence. But if an indictment be taken in Midd. in the Vacation, and after this Court ſit in the next Term in the ſame County (if this Court be adjourned) then may ſpeciall Commiſſioners of Oier and Terminer, &c. in the interim pꝛoceed upon that indictment, but the moꝛe uſuall way is by ſpeciall Commiſſion. And all this was reſolved by all the Judges of England at Wincheſter Term, Anno 1 Jacobi Regis, in the caſe of Sir Everard Digby and others: and ſo had it been reſolved, Mich. 25. & 26. Eliz. in the caſe of Arden and Somervile, foꝛ this kind of ſpeciall Commiſſion of Oier and Terminer: and herewith agreeth Pl. Com. in the Earl of Leic. caſe. Anno 1 Mar. reginæ. [a] 21 aſſ.12.27.aſſ.1. 28 aſſ.52. 21 H.7.29. [b] Paſch.12 E.3. Coram Rege. Ro.99 Chicell. W.1.cap.3. Lib.9.fo.118. Ubi ſupra. Hil.1 Ia. Sir Walter Raleighs caſe, &c. Pl.Com.fo.338. Count.de Leic. caſe 3ce'.

And ſo ſupꝛeam is the juriſdiction of this Court, that if any Recoꝛd be removed into this Court, it cannot (being as it were in his center) be remaunded back, unleſſe it be by Act of Parliament. And this appeareth by the Judgement of the Parliament in Anno 6 H.8. but by the authoꝛity of that Act indictments of Felonies and Murders removed into the Kings Bench may by the Juſtices of that Court be remaunded, and this Court may ſend down as well the bodies of all Felons and Murderers, as their indictments into the Counties where the ſame murders oꝛ felonies were committed oꝛ done, &c. in ſuch manner, &c. as if the indictments had not been bꝛought into the King Bench. 22 E.3.6.b. 24 E.3.73. 29 aſſ.52. Stanf.pl.C.r.17. 6 H.8.cap.6. It extendeth onely to Feloni s and Murders.

But

See before cap. Parliam. pag. 21. when a writ of Error i sued of a Judgement, *Coram rege*, they proceed *super tenore recordi*, and the record it self remaineth in this Court.

But the Justices of the Kings Bench of their own authority may grant a Nisi prius in cals of treason, felony, and other pleas; for there they send but the transcript of the Record, and not the Record it self, as shall be said in the Chapter of Justices of Nisi prius. But if the Justices of the Kings Bench doe perceive that any indictment is to be removed into that Court by practise or for delay, the Court may refuse to receive the same, before it be entred of Record, and remaund the same back again for justice to be done.

2 H. 4. cap. 10.

By the statute of 2 H. 4. the Clerk of the Crown of this Court, if fourscore or an hundred men be indicted of felony or trespasse, of one felony, or one trespasse, and they plead to an issue, as not guilty, the said Clerk ought not to take for the Venire fac', nor for the entring of the plea but two shillings onely, and not two shillings for every one, which Act is made in affirmance of the Common law. So if one man be indicted of two severall felonies or trespasses, and is acquited, he shall pay but for one deliverance.

26 Ass. p. 4.

Dat of this Court are other Courts derived, as from one fountain severall springs and rivers, in respect of the multiplicity of causes, which have increased. Jurisdictio istius curiæ est originalis seu ordinaria, & non delegata. The Justices of this Court have no Commission, Letters Patents or other means to hold pleas, &c. but their power is originall and ordinary. They were called anciently * Justiciæ, Justiciarii, locum tenentes domini regis, &c. The Chief Justice, Justitia Angliæ, Justitia prima, Justiciarius Angliæ, Justiciarius Angliæ capitalis, and Justiciarius noster capitalis ad placita coram nobis terminand'. To observe the changes of these names, and the reason and change thereof, is worthy of observation.

Designatio Iustiariorum est à rege, jurisdictio vero ordinaria à lege.

* Glanvil lib. 1. ca. 6. 13. &c. sæpenumero.

* Lib. nigro i 1 Scaccario. par. 1. ca. 4. Never in any legall record (which we have seen) they were called *Summi Iusticiarii*. Rot. Cart. 45 H. 3. 13. Aug.

Before the reign of E. 1. the Chief Justice of this Court was created by Letters Patents, and the form thereof (taking one example for all) was in these words.

Capitalis Iusticiarius Angliæ.

Rex, &c. Archiepiscopis, Episcopis, Abbatibus, Prioribus, Comitibus, Baronibus, Vicecomitibus, Forestariis, & omnibus aliis fidelibus regni Angliæ, Salutem. Cum pro conservatione nostra, & tranquillitatis regni nostri, & ad justitiam universis & singulis de regno nostro exhibendam constituerimus dilectum & fidelem nostrum Philippum Basset Justiciarium Angliæ quamdiu nobis placuerit capitalem: Vobis mandamus in fide qua nobis tenemini firmiter injungentes, quatenus in omnibus quæ ad officium Justiciarii prædicti, nec non ad conservationem pacis nostræ & regni nostri eidem dum in officio prædicto steterit, plenius sitis intendentes, Teste Rege, &c.

Herein 6. things are to be observed. 1. That the creation of his office was by Letters Patents. 2. That this officer was originally instituted for three things. 1. Pro conservatione nostra. 2. Tranquillitatis regni nostri. 3. * Ad justitiam universis & singulis de regno nostro exhibendam. The third thing to be observed is, that he was stiled Justiciarius Angliæ capitalis. 4. That Philip Basset was constituted Chief Justice of England, and after made Knight, for he was not Knight at the making of the Letters Patents. This Philip was of Welledge in the County of Northampton, & was excellently learned in the laws of the Realm; he was younger brother of Baron Basset of Draiton Basset in the County of Staff. 5. That he was constituted quamdiu nobis placuerit. Lastly, the clause of attendance, and the persons that are to give attendance, &c. to him, are very remarkable. This Philip Basset was the last of this kind of creation by any like Letters Patents, and he died Chief Justice neer to the end of the reign of H. 3. King E. 1. being a wise and prudent Prince, knowing that Cui plus licet quam par est, plus vult quam licet, (as most of these summi Justiciarii did) made three alterations. 1. By limitation of his Authority. 2. By changing Summus Justiciarius, to Capitalis Justic'. 3. By a new kind of creation, viz. by Writ, lest if he had continued his former manner of creation, he might

* This was the originall jurisdiction of this Court.

might have had a deſire of his former Authority, which three doe expreſſy appear by the Writ yet in uſe, viz.

Rex, &c. E.C. militi Salutem. Sciatis quod conſtituimus vos Juſticiarium noſtrum capitalem ad placita coram nobis tenenda, durante beneplacito noſtro. Teſte, &c.

Which writ being called Breve doth in few words comprehend the ſubſtance of the former Letters Patents: for Capitalis Juſticiarius noſter and ad placita coram nobis tenenda includes all that which was truly intended to be granted to him in the former Letters Patents, which alteration were made by Authority of Parliament, though not now extant. For it is a rule in law, that ancient offices muſt be granted in ſuch forms and in ſuch manner, as they have uſed to be, unleſſe the alteration were by Authority of Parliament. And continuall experience approveth, that for many ſucceſſions of ages without intermiſſion, they have been, and yet are called by the ſaid writ, Et optimus legum interpres conſuetudo. But after the ſaid alteration, viz. in anno 25 E.1. Reginaldus de Grey (was ſtiled) Juſticiarius Angliæ, and he was in legall proceedings called Capitalis Juſticiarius noſter, when his Patent was, Capitalis Juſticiarius Angliæ.

We have ſeen a fine in theſe words: Hæc eſt finalis concordia facta in curia domini regis apud Weſtm' à die Sancti Michaelis in tres ſeptimanas, anno Regni Regis Henrici filii regis Johannis 3. coram domino Huberto de Burgo capitali Juſticiario Angliæ & aliis domini Regis fidelibus tunc ibi præſentibus.

[a] In the Writ De homine replegiand', he (which was formerly called Capitalis Juſticiarius Angliæ) is called Capitalis Juſtic. noſter, and ſometime Cap. Juſtic' Regis. The ſtile of this Court of Kings Bench is Anglia in the margent: and in divers Acts of Parliament he is called Chief Juſtice of England. 34 H.8. cap.26. 37 H.8.cap.12. 2 E.6.cap.13. 5 E.6.cap.11.

The Chief Juſtice in Ireland is called Capitalis Juſticiar' Hiberniæ at this day. Paſch. 13 E. 1. (the pleas in this Court are Coram rege) then were ſtiled thus, Placita coram locum domini regis tenentibus, &c. Ideo venit inde jurata coram rege vel ejus locum tenentibus, 15 Paſchæ, &c. within which words all the Judges of the Kings Bench were included.

[b] Anno domini 969. in the Abby of Ramſey this Epitaph was ingraven, &c. D. Ailivinus inclyti regis Edgari cognatus *totius Angliæ * Aldermannus, &c.* who was without queſtion Chief Juſtice of all England. Inter leges Alveredi cap. 34. he is called *Cyninger ealdorman, i.* Regis Aldermannus ſive Senator, ſive Iudex. Vide cap.3.15. & 38. Et inter leges Edwardi ca.35.

The reſt of the Judges of the Kings Bench have their Offices by Letters Patents in theſe words. Rex omnibus ad quos præſentes literæ pervenerint, Salutem. Sciatis quod conſtituimus dilectum & fidelem Johannem Doderidge militem unum Judiciariorum ad Placita coram nobis tenenda durante beneplacito noſtro, Teſte, &c. [c] Theſe Juſtices of the Kings Bench are ſtiled 1. Capitales. 2. Generales. 3. Perpetui. 4. Majores à latere regis reſidentes: but the Chief Juſtice is only called by the King, Capitalis Juſticiarius noſter. They are called 1. Capitales, in reſpect of their ſupream jurisdiction. 2. Generales, in reſpect of their generall jurisdiction throughout all England, &c. 3. Perpetui for that they ought not to be removed without juſt cauſe. 4. Majores à latere regis reſidentes, for their honour and ſafety, that they ſhould be protected by the King in adminiſtration of juſtice, for that they be à latere Regis.

And where in 5 E.4. it is holden by all the Juſtices in the Exchequer chamber that a man cannot be Juſtice by Writ but by Patent or Commiſſion, it is to be underſtood of all the Judges, ſaving the Chief Juſtice of this Court. But both the Chief Juſtice, and the reſt of the Judges may be diſcharged by Writ under the Great Seal.

None can be a Judge of this Court unleſſe he be a Serjeant of the degree of the Coif, and yet in the Writ or Patent to them made: they are not named Serjeants.

If

See in the chapter of the Conſtable and Marſhall for this point.

Rot. Par. 25 E. 1. ſo named in the Writ of Parliament to him directed.

[a] Nota, his fine was levied, *Inter Martinum Abbatem de Miſſenden querentem, & Thurſtanū Baſſet deforcientem de 3 Carucat' terræ in Iuga*, before him in the Kings Bench, in 3 H.3. before Mag. Carr. and ſtiled *Capit. Juſticiar' Angliæ* Lib. *de Miſſenden* fo. 109. diver. other fines with the ſame ſtile.

[a] Regiſt. fo. 77. 24 E.1. *Stat. de conſultat'.* 3 E.3. Coron 361. Lib. Int. Co. it. *action ſur le caſe.* Sect. 5.

[b] Aldermanni Iudices dicti ſunt in diebus illis

[c] Bract. li. 3. l. 108

L. 5 E. 4. 137.

If a Writ be returnable Coram Justiciariis nostris apud Westm', it shall be returned in the Common pleas: but if it be returnable in this Court, it must be Coram nobis ubicunque fuerimus in Anglia. See the Second part of the Institutes, Mag. Cart. cap. 11. and the exposition upon the same.

In former times some ill disposed Clerks of this Court, because they could have no originall out of the Chancery for debt returnable into this Court, they would sue out an originall action of trespasse (a meer feigned action) returnable into this Court, and so proceed to Exigent, (where in truth the cause of action is for debt) and when the Defendant appeared, &c. all the former proceedings were waved, and a bill filed for the Defendant for debt. This is an unjust practise in derogation of the dignity and honour of this Court, and worthy of severe punishment according to the statute of W. 1. c. 29. when it is found out: Vide in the Chapter of the Court of Common Pleas in the end thereof.

W. 1. ca. 29.
Vid. 30 H. 6. 37. a. 30 E. 3. 32. It is fraud where one thing is pretended, and another done.

Now that we may here say somewhat to a vulgar objection of the multiplication of suits in law both in this Court, and other of his Majesties Courts at Westm. more then hath been in the reigns of E. 3. R. 2. H. 4. H. 5. H. 6. E. 4. and R. 3. It is to be observed, that there be six causes of the increase of them, whereof two be generall, & the other four particular. The generall be Peace, and Plenty: The particular, 1. The dissolution of so many Monasteries, Chanteries, &c. and the dispersing of them into so many severall hands. 2. The swarme of Informers. 3. The number of Concealors. 4. The multitude of Atturnies.

Multiplication of suits.
Peace.
Plenty.
Dissolution of Monasteries, &c.
Informers.
Concealors.
Atturnies.

For the first generall: In the reigns of E. 3. R. 2. H. 4. H. 5. and part of the reigne of H. 6. in respect of the wars in France, &c and in the residue of the reigne of H. 6. and in the reign of E. 4. in respect of the bloody and intestine wars, and in almost continuall alarums within the bowels of this kingdome, between the Houses of Lancaster and York, there could not be so many suits in law, as since this Kingdome hath enjoyed peace; which is the first generall cause. Peace is the mother of Plenty, (which is the second generall cause) and Plenty the Nurse of suits. In particular, by the dissolution of Monasteries, Chanteries, &c. and dispersing of them, &c. Upon the statutes made concerning the same (there being such a confluence of Ecclesiasticall possessions) there arose many questions and doubts, whereupon suits were greatly increased. 2. Informers and Relators raised many suits, by informations, writs, &c. in the Kings Courts at Westm' upon penall statutes, many whereof were obsolete, inconvenient, and not fit for those daps, and yet remained as snares upon the subjects, so as the subject might justly say with Tacitus, Prius vitiis laboravimus, nunc legibus. 3. Concealors, Helluones, that endeavoured to swallow up Cathedrall Churches, and the Ecclesiasticall possessions of Church-men, and the livings of many others of the Kings subjects. Lastly, the multitude of * Atturneys, more then is limited by law, is a great cause of increase of suits.

Silent leges inter arma.

Concordia parvæ res crescunt, ex opulentia lites.

* See the Preambles of the star. of 4 H. 4. ca. 18. 33 H. 6. ca. 7.

[a] But now on the other side, to shew what great hope there is, that suits in law shall decrease, for that in effect all the particular causes of the increase of them are taken away, which we have thought good to remember.

[a] Diminution of suits.

[b] For the first, the statute of 35 Eliz. cap. 3. hath remedied part, but the statute of 21 Ja. ca. 2. hath given a plenary salve for the whole mischiefe, whereof you may read at large in the Third part of the Institutes, cap. 87. against Concealours, turbidum hominum genus. [c] For the second, by the statute of 21 Jac. cap. 4. Informations, &c. upon penall statutes are to be heard and determined in their proper Counties, and not in the Courts at Westminster, whereby the verations swarm of Informers who are best trusted where they are least known, are banished and turned again to their former occupations. [d] Concerning Atturnies, the number are set down, and that they ought to be learned and vertuous, and as I understand, the Judges at this time have this matter in consideration. But besides these; there are some other statutes made for avoyding and decreasing of verations suits. As an [e] Act in 21 Jac. Regis cap. 16. for limitation of actions and avoiding suits in law, a good and beneficiall law. Another Act at the same Parliament, cap. 13. for the further reformation of Jeofails

[b] Possessions of Monast. and Chanteries, &c. 35 El. ca. 3. 21 Ja. cap. 2. Concealors.
[c] 21 Jac. ca. 4. Informers. See the Third part of the Inst. cap. against vexatious relators, Informers, &c.
[d] Atturnies Rot. Par. 20 E. 1. Rot. 4. *De Apprenticiis & Attornatis*. 15 R. 2. nu. 28. 4. H. 4. ca. 18. 33 H. 6. ca. 7. See Rot. Parl. 13 H. 4. nu. 63. not in print.
[e] 21 Ja. ca. 16.

ſaits, a good law for ending of ſuits. Another at the ſame Parliament, cap. 8. to prevent and puniſh abuſes in procuring of proceſſe of Superſedeas of the peace and good behaviour, out of his Majeſties Court at Weſtminſter, &c. whereby infinite vexations, troubles and charges of the ſubjects are prevented. Another at the ſame Parliament, ca. 23. for avoyding of vexatious delays in cauſes by removing of actions and ſuits out of inferiour Courts, wherein the former abuſe was vexatious, grievous, and chargeable to the ſubject. A branch of an Act at the ſame Parliament, cap. 16. for pleading of tender of amends in an action of treſpaſſe, Quare clauſ. fregit, for a treſpaſſe by negligence, or involuntary, wherein the Defendant maketh no title, &c. an excellent and neceſſary law for avoiding of trifling and vexatious ſuits, eſpecially in Champion Countries. An Act at the ſame Parliament, ca. 2. againſt Monopolies and new projects, &c. a great quiet for the time to come. Anno 3 Caroli Regis nunc, cap. 1. The petition of Right concerning the rights and liberties of all the ſubjects of this Realm for their repoſe and quiet. Laſtly, the repeal of ſo many obſolete penall ſtatutes is a great mean of diminution of ſuits.

See the 3. part of the Inſt. cap. againſt Monopoliſts and Projectors. 3 Car. Regis c. 1. 21 Jac. ca. 28. 3 Car. ca. 4.

For the aboveſaid generall cauſes, viz. Peace and Plenty, long may they happily by the goodneſſe of God continue without abuſe within this Realm.

The Kings Bench hath authority for great miſpriſions and offences, to adjudge and inflict corporall puniſhment, as Pillory, Papers, and the like: whereof you may read many preſidents in the Third part of the Inſtitutes, pag. 219, 220.

CAP. VIII.

The Court of Chancery.

¶ *The Antiquity of this Court,* 26 E.3.aſſ.p.24. and the preface to the third book of Reports. Hiſtory of Ely, *Hugo Petroburgenſis, Leland.* Forteſc.cop.17.

CErtaine it is, that both the Britiſh and Saxon Kings had their Chancelors and Court of Chancery, the only Court out of which originall writs doe iſſue: As taking ſome few examples before the Conqueſt.

Edward **the Confeſſor** had Reinbald **his Chancelor. This** Edward **granted** many **Manors, Lands,** &c. and **Franchiſes to the Abbot of Weſtminſter, and endeth his Charter thus.** Ad ultimum, cartam iſtam ſigillari juſſi, & ipſe manu mea propria ſignum Crucis impreſſi, & idoneos teſtes annotari præcepi: **and amongſt thoſe witneſſes this you ſhall finde;** Swardus notarius ad vicem Reinbaldi regiæ dignitatis Cancellarii hanc cartam ſcripſi & ſubſcripſi. **He had alſo** Lefrick **to his Chancelor.**

In the ſecõd book of the Hiſtory of Ely, written in the reign of king Stephen ſoon after the Conqueſt. * Curia Canc'. Nota.

King Etheldred **alſo had a worthy name, and a worthy man to his Chancelor.** Rex Etheldredus ſtatuit atque conceſſit quatenus Eccleſiam de Elye ex tunc & ſemper in regis * curia Cancellariæ ageret dignitatem, &c. **This King began his reign,** Anno domini 978. **which albeit it was void in law to grant the Chancelorſhip of England in ſucceſſion, yet it proveth that then there was a Court of Chancery.**

King Edgar **had** Adulph.: **King** Edred **had** Thurkettle.: **King** Edmond **the ſame: King** Athelſtane Wolfine, **their Chancelors,** &c.

For further proof that there was a Court of Chancery before all theſe Kings time, out of which writs remediall iſſued, as they doe to this day: hear what the Mirror **ſaith,** Le primer conſtitutions ordenus per les viels roys, &c. ordein fuit que cheſcun eyt del Chancery le roy brief remedial aſon pleint ſans difficultie. **Hereby it appeareth that in the reign of King** Alfred **there was a Court of Chancery out of which writs remediall iſſued, which was not then inſtituted, but affirmed to be a Court then** in eſſe, **& enacted that out of that Court writs remediall ſhould be granted without difficulty, which law continueth to this day: And thus much touching the Court of Chancery before the Conqueſt: and therefore** * Polydor Virgill, **who affirmeth this Court to come in with the Conqueror,** perperam erravit.

Mirror ca.1.§.3. & vide ca.5.§. *pur le enrolments de pardon le roy in le Chancery en temps le roy Alfred.* King Alfred began to reign anno Dom. 872. and was father to King Edward Senior father of the ſaid Athelſtane. * Error Polydori.

In a Charter to the Abbot of Weſtminſter by William **the Conqueror, and amongſt the witneſſes it is written thus,** Ego Mauritius Regis Cancellarius favendo legi, & ſigillavi. Arfaſtus **Biſhop of Northelmham in Norff. who tranſlated his See to Thetford, was alſo Chancelor to the Conqueror.**

Fitz. Stephen tempore H.2. in the end of Stows ſurvey of Lond. Bracton fo. See Glanv.li.12. ca.1. & 5.&c. Fleta.li.2.ca.12.

Cancellarii Angliæ dignitas eſt, ut ſecundus à rege in regno habeatur, ut altera parte ſigilli regii, quod & ad ejus pertinet cuſtodiam, propria ſignet mandata, &c.

Omnia brevia de pace, &c. irrotulari debent in rotulo Cancellariæ.

Fleta **ſaith,** Eſt inter cætera quoddam officiũ quod dicitur Cancellaria, quod uno provido & diſcreto, ut Epiſcopo vel clerico, magnæ dignitatis debet committi ſimul cum cura magni ſigilli regni, cujus ſubſtituti ſunt Cancellar' omnes in Anglia, Hibernia, Wallia, & Scot' omneſque ſigilla regis cuſtodientes ubique præter cuſtodem ſigilli privati. Cui aſſocientur clerici honeſti, circumſpecti domino regi jurati, qui in legibus & conſuetudinibus Anglicanis notitiam habeant pleniorem, quorum officium ſit ſupplicationes & querelas conquerentium audire & examinare, & eis ſuper qualitatibus injuriarum oſtenſarum debitum remedium exhibere per brevia regis.

W.2.13 E.1.c.1. 13 E.1.ca.23,24.

Breve de forma donationis in revertere ſatis eſt in uſu in Cancellaria.

In Cancellaria & in regiſtro Cancellariæ.

For the antiquity and authority of this book of the Register of the Chancery, see the first part of the Institutes, Verb. per le Register, and in the Epistle to the ninth book of my Commentaries. 1 part Instit. Sect. 10. Epist. lib. 9.

But to proceed (omitting many others) Robert Parning tooke the state and degree of a Serjeant at law in 3 E. 3. and became the Kings Serjeant, and for his profound & excellent knowledge of the laws, in Trin. Term 14 E. 3. was 24. Julii by writ created Chief Justice of England: in which office he remained untill the 15 of December following, on which day he was made Lord Treasurer of England. In that office he remained untill the 15 year of the reign of the same King, and then was constituted Lord Chancelour. This man knowing that he that knew not the common law, could never well judge in equity (which is a just correction of law in some cases) did usually sit in the Court of Common Pleas, (which Court is the lock and key of the Common law) and heard matters in law there debated, and many times would argue himselfe, as in the report of 17 E. 3. it appears. Vid. postea ca. 10 of the Court of Common pleas. Ubi non est scientia, non est conscientia. 17 E. 3. fo. 11. 14. 23. 37.

In the 30 yeare of E. 3. Sir Robert Thorpe Chief Justice of the Common Pleas (not Sir William Thorpe Chief Justice of England, convicted of sordid bribery) a man of singular judgement in the laws of this Realm, was constituted Lord Chancelour of England. And in the Parliament Anno 45 E. 3. a grievous complaint was made by the Lords and Commons, that the Realme had been of long time governed by men of the Church in diherison of the Crown, and desired that Lay men only be principall Officers, &c. Rot. Parl. 45 E. 3. Rot. 22. nu. 15.

After the decease of Sir Robert Thorp 5 Julii Anno 46 E. 3. Sir John Knivet Knight, chief Justice of England, a man famous in his profession, was made Lord Chancelor of England, who deceased in Anno 50 E. 3. &c.

In perusing the Rols of Parliament in the times of these Lord Chancelors, we find no complaint at all of any proceeding before them. But soone after, when a Chancelour was no professor of the law, we finde a grievous complaint by the whole body of the Realme, and a Petition that the most wise and able men within the Realm might be chosen Chancelors, and that he seek to redresse the enormities of the Chancery. But leaving many other Records to their proper places hereafter, we will conclude this point concerning the antiquity and jurisdiction of this Court with the opinion of all the Judges of the Realm in 9 E. 4. in a suit in the Court of Exchequer against the Clerk of the Hamper in the Chancery upon his account in the Exchequer, where it was holden by all the Justices in the Exchequer Chamber, that all the Courts of the King have been time out of memory, so as a man cannot know which of them is the ancientest Court. And Justice Yong the plaintife demanded of the Justices, what if the Chancelour command me upon a payne, that I shall not sue him? To whom Billing the chief Justice answered, You are not bound to obey it, because that commandment is against law: But seeing that toucheth upon the jurisdiction of the Court, let us in the next place handle that point. Rot. Par. 5 R. 2. nu. 20.

The Iurisdiction of the Court.

In the Chancery are two Courts, one ordinary, Coram Domino Rege in Cancellaria,[a] wherein the Lord Chancelour or Lord Keeper of the Great Seale proceeds according to the right line of the laws and statutes of the Realm, secundum legem & consuetudinem Angliæ.[b] Another extraordinary according to the rule of equity, secundum æquum & bonum. And first of the former Court.

[a] 18 E. 4. 5. 9 E. 4. 15. 14 E. 4. 7.

[b] Stan. prær. c. 10 fo. 65. b. Pl. com. fo. 72.

[c] He hath power to hold plea of Scire fac' for repeal of the Kings Letters patents, of Petitions, monstrans de droits, traverses of Offices, Partitions in Chancery, of Scire fac' upon recognisances in this Court, Writs of Audita querela, and Scire fac' in the nature of an Audita querela to avoid executions in this Court;[d] dowments in Chancery, the Writ de dote assignanda upon offices found, execution upon the Statute staple, or Recognisance in nature of a Statute staple upon the Act of 23 H. 8. but the Execution upon a Statute merchant is retornable either into the Kings bench, or into the Common pleas, and all

[c] Rot. Par. 8 H. 4. nu. 122. 2 R. 3. 1.

[d] Regist. 297. F. N. B. 263. Stanf. prær. ca. Rot. Par. 18 E. 3. nu. 41. 42.

perſonall actions by or againſt any Officer or Miniſter of this Court in reſpect of their ſervice or attendance there. [a] In theſe if the parties deſcend to iſſue, this Court cannot try it by Jury, but the Lord Chancelour or Lord Keeper delivereth the Record by his proper hands into the Kings Bench to be tried there; becauſe for that purpoſe both Courts are accounted [b] but one, and after triall had to be remanded into the Chancery, and there judgement to be given. But if there be a demurrer in law, it ſhall be argued and adjudged in this Court. Nota, the legall proceedings of this Court be not inrolled in Rols, but remaine in filaciis being filed up in the Office of the Petty-bag. [c] Upon a judgement given in this Court a Writ of Error doth lye returnable into the Kings Bench: [d] The ſtile of the Court of the Kings Bench is coram rege (as hath been ſaid) and the ſtile of this court of Chancery is coram domino rege in Cancellaria, & additio probat minoritatem. And in this Court the Lord Chancelour or the Lord Keeper is the ſole Judge: and in the Kings Bench there are four Judges at the leaſt.

[a] 13 E. 2 coram Rege. Rot. 51. London.

[b] 10 E. 3. 61. 24 E. 3. 65. 73.

[c] 18 E. 3. 25. 17. aſſ. 24. 14 Eliz. Dier 315 Pl. com. 393. a.

[d] In Par. Tr. 9 h. 6. Rot. 5 int. placita regis.

¶ *Officina Juſtitiæ.*

This Court is Officina Juſtitiæ, **out of which all originall Writs and all Commiſſions which paſſe under the Great Seale go forth, which Great Seal is** Clavis regni, **and for thoſe ends this Court is ever open.**

Fleta lib. 2. ca. 12. Bract. li 5. fo. 413. Britton ca. 84. Fleta lib. 6. ca. 35, & 36.

Of this Court Fleta ubi ſupra, **ſaith,** Dicuntur Brevia cum ſint formata ad ſimilitudinem regulæ juris, quæ breviter, & paucis verbis intentionem proferentis exponunt, ſicut regula juris, rem quæ eſt breviter enarrat: non tamen ita debet eſſe bre quin rationem & vim intentionis contineat. Et ſunt quædam Brevia formata ſub ſuis caſibus, & quædam de curſu quæ conſilio totius regni ſunt approbata, quæ quidem mutari non poterunt abſque eorundem contraria voluntate. Sunt & Brevia ex eis ſequentia quæ dicuntur judicialia, & ſæpius variantur ſecundum varietatem placitorum proponent & reſpondent, petentis & excipientis & ſecundum varietatem reſponſionum. Sunt & quædam quæ dicuntur magiſtralia & ſæpius variantur ſecundum diverſitatem caſuum, factorum & querelarum, & quorum quædam ſunt perſonalia, & quædam realia, & quædam mixta, ſecundum quod ſunt actiones diverſæ vel variæ, quia tot erunt formulæ brevium, quot ſunt genera actionum, quia non poteſt quis ſine brevi agere, præcipue de libero tenemento ſuo, quia non tenetur quis reſpondere ſine brevi, niſi gratis voluerit, & cum hoc fecerit quis, ex hoc qi non injuriabitur: volenti enim & ſcienti non fit injuria. De eadem autem re, plures alicui competere poterunt actiones, ordine autem, ut convenit, obſervato. Breve quidem regis in ſe nullam debet continere falſitatem, nec aliquem errorem: apparere debet vel in prima ſui figura non vitioſum, maxime ſi fuerit patens ſive apertum, quia originalia quædam ſunt clauſa, & quædam aperta. Et ſive aperta, ſive clauſa, apparere non debent abraſa, nec abolita: & ſi inveniatur abraſio, tunc refert quo loco, à quo, & quando. Quo loco? videlicet utrum in narratione facti vel juris. Si autem in narratione facti, cadet coram Juſt' quaſi ſuſpectum. Facta enim & nomina mutari non debent, ſed jura ubique ſcribi poſſunt. A quo? utrum videlicet per Clericum Cancellar cui autoritas data fuerit, vel auſu temerario per alium ſicut Clericum Juſtic', vel Vic' ad procurationem alicujus partis: quo caſu omnes agentes & conſentientes tanquam falſarii puniantur. Item quando? videlicet utrum hoc fiat antequam bre in cura reſuſcitatum & publicatum, vel poſt. Si autem poſt, erit breve ſuſpectum & cadet, ſi à tenente fuerit hoc calumpniatum. Fiunt autem brevia judicialia in Cancellaria ex recognitionibus & contractibus habitis & in Rotulis Cancellariæ irrotulatis & ex recordo cancellario & Clericis ſibi aſſociatis per hanc conſtitutionem conceſſo. Quia de hiis quæ recordata ſunt coram Cancellar domini regis, & ejus Juſtic' qui recordum habent & in rotulis eorum irrotulantur, non debet fieri proceſſus placiti per ſummonitionem, vel attachiament, eſſonia, viſus tre & alias ſolempnitates Cur ſicut fieri conſuevit ex contractibus, & conventionibus factis extra curiam. Obſervandum eſt de cætero quod ea quæ inveniuntur irrotulata coram hiis qui recordum habent vel in finibus contenta, cum ſint contractus ſive conventiones vel obligationes ſive ſervicia aut conſuetudines recognitæ ſive alia quæcunq; irrotulata quib' Cur regis ſine juris & conſtitutionis offenſa authoritatem præſtare poteſt, talem de cætero habeat vigorem, quod non

ſit

ſit neceſſe de hiis placitare in poſterum, ſed cum venerit querens ad curiam domini regis, ſi recens ſit cognitio, vel finis, *viz.* infra annum per bꝛe levatus, ſtatim habeat bꝛe de executione illius recognitionis factæ: & ſi forte à majore tempore tranſacto facta fuerit illa recognitio, vel finis levatus: præcipiatur Vicꝯ quod ſcire facꝯ parti de qua fit querimonia, quod ſit ad certum diem, oſtenſ. ſi quid ſciat dicere quare hujus irrotulata vel in fine contenta executionem habere non debeant. Et ſi ad diem venerit, & nihil ſciat dicere quare executio fieri non debeat, præcipiatur Vicꝯ quod rem irrotulatam vel in fine contentam exequi facꝯ. Eodem modo mandetur ordinario in ſuo caſu, obſervato nihilominus quod inferius dicetur in ſtatuto de medio qui per judicium aut recognitionem eſt obligatus. Ex hac quidem conſtitutione oriuntur bꝛia judicialia in Cancellaria ſicut coram ipſis Juſtic. Ipſi autem collaterales & ſocii Cancellarii eſſe dicuntur præceptores, eo quod bꝛia cauſis examinatis remedialia fieri præcipiunt, & hoc quoque cum fine denaꝝ ad opus domini regis, & quoque ſine fine, eo quod omnia bꝛia non ſunt omni tempore æquipollentia. De brevibus autem coram Juſticꝯ ad primas Aſſiſas cum in partes illas venerint, fines capere non conſueverunt, eo quod ad tempus itineris Juſticꝯ, ligat conſtitutio Magnæ Cartæ quæ talis eſt; *Nulli juſtitiam negabimus, vendemus, vel differemus*: ſed non inhibetur quin fines capiantur pro brevibus poſſeſſionum, & actionum perſonalium, pro celeriore Juſtitia habenda; qui quidem pro qualitatibus & quantitatibus portionem conceſſi in eiſdem brevibus ımbreviabuntur, & in rotulis Cancellariæ irrotulantur. Qui quidem rotuli ſingulis annis ad Scaccaꝝ liberabuntur, & fines hujus extrahantur & per ſummoñ Scaccarii leventur. Clauſula vero finis talis eſt, *Et cape ſecuritatem à præfato tali de* 40 *ſolid. ad opus noſtrum pro hoc brevi.* Verba autem extractꝯ de Scaccario ſunt hæc, *De A. de B. pro brevi habend', dimꝯ marcꝯ* vel amplius prout finis factus fuerit. Conceduntur aliquando conquerentibꝰ ob favoꝛẽ paupertatis quod ubi præſumi poteſt ſic quod plegios invenire non poſſunt de proſequendꝰ clamoꝛẽ ſuum quod ſecuritatem præſtent Vicꝯ per fidei interpoſitionem ſuam, non tamen in actionibus perſonalibus hoc concedendum eſt. Habet & Rex Clericos in officio illo expertos & legales qui formulas breviũ cognoſcunt, qui approbanda admittunt & defectiva omnino repellunt, quibus omnia bꝛia priuſquã ad ſigillũ proveniunt cum deliberatione diſtincte & aperte in ratione, dictione, litera & ſyllaba examinare injunctum eſt. Et ſciendum quod nullum bꝛe niſi per manus eorundem ad ſigillum debet admitti. Habet etiam ſex Clericos ſuos prænotarios in officio illo, qui cum Clericis memoratis familiares, &c. eſſe conſueverunt & præcipue ad victum & veſtitum qui ad bꝛia ſcribenda ſecundum diverſitates querelarum ſunt intitulati. Et qui omnes pro victu & veſtitu de proficuo ſigilli in cujuſcunque uſus pervenerit debent honeſte inveniri. Sunt etiam nihilominus Clerici juvenes & pedites quibus de gratia Cancellaꝝ conceſſum eſt pro expeditione populi bꝛia facere curſoria, dum tamen ſub advocatione Clericorum ſuperiorum fuerint qui eorum facta in eorum receperint pericula. Et in quolibet bꝛi debet ſcribentis nomen inbreviari qui warrantizare poterint in peccatores ſi neceſſe fuerit. Et ne præfati Clerici ſuperflua petant ſtipendia pro ſcriptura ſua, conſtitutum eſt quod tam Clerici Juſticꝯ quam Cancellaꝝ de ſolo denario pro ſcriptura unius brevis ſe teneant contentos.

And this Court is the rather alwayes open, for that if a man be wrongfully imprisoned in the Vacation, the Lord Chancelour may grant a Habeas corpus **and doe him Justice according to law, where neither the Kings Bench nor Common Pleas can grant that Writ but in the Term time; but this Court may grant it either in Term time or vacation. So likewise this Court may grant Prohibitions at any time either in Terme or Vacation: which Writs of Prohibition are not returnable: but if they be not obeyed, then may this Court grant an Attachment upon the prohibition returnable either in the Kings Bench or Common Pleas.**

The Author of that Book (speaking of the **Court of Chancery, and of the jurisdiction it then had,** saith, Curia Cancellariæ Regiæ eſt curia ordinaria pro brevibus originalibus emanandis, ſed non placitis communibus tenendis.

New Tales, or *Novæ Narrationes*, written about the beginning of E. 3.

Divers Acts of Parliament give authority to the Lord Chancelour to heare and

27 E. 3. cap. 13. 2 R. 3. fo. 3. 13 E. 4. Dier 12 El. 288. 2. reſolve.

determine divers offences and cauſes in the Court of Chancery, which is ever intended in this Court proceeding in Latin, ſecundum legem & conſuetudinem Angliæ, and the Defendant ſhall not be ſworne to his anſwer, nor examined upon Interrogatories, and upon iſſue joyned it ſhall be tried in the Kings Bench, Ut in ſimilibus caſibus ſolet. But our purpoſe is not to enumerate all theſe ſtatutes, for our aim is principally at the generall jurisdiction of this Court.

¶ *Officers and Miniſters of this Court.* See the 2. part of the Inſt. W. 2. ca. 24 *Verb. Clerici de Cancellaria.*

The Officers and Miniſters of this Court of Common law doe principally attend and doe their ſervice to the Great Seal, as the * twelve Maſters of the Chancery, whereof the Maſter of the Rols is the chief, who by their originall inſtitution, as it is proved before, ſhould be expert in the Common law, to ſee the forming and framing of originall writs according to law, which are not of courſe; whereupon ſuch are called in our ancient Authors Brevia Magiſtralia. The Clerk of the Crown, the Clerk of the Hamper, the Sealer, the Chaſe war, the Controller of the Chancery, twenty four Curſitors for making writs of courſe or formed writs according to the Regiſter of the Chancery, the Clerk of the preſentations, the Clerk of the Faculties, the Clerk examiner of Letters Patents, the Clerks of the Pettibag, and the ſix Atturnies. The proceſſe in this Court is under the Great Seal according to the courſe of the Common law.

* In the Parliament Rol of 5 R. 2. nu. 23. they are called chief Clerks.

Having ſpoken of the Court of ordinary jurisdiction, it followeth according to our former diviſion, that we ſpeak of the extraordinary proceeding according to the rule of equity, ſecundum æquum & bonum, wherein we will purſue our former order.

¶ *Of the Antiquity of this Court of Equity.* Henry Beaufort ſon of John of Gaunt Biſhop of Winch. Cardinal of St Euſebius, Lord Chancelor in the beginning of the reign of H. 6. and in that Kings reign Iohn Kemp Cardinall of S. Ruffeline Archbiſhop of York, Lord Chancelor. See Rot. Parl. 28 H. 6. nu. 10. & 35 H. 6. fo. 3.

Albeit our ancient Authors, the Mirror, Glanvill, Bracton, Britton and Fleta, doe treat of the former Court in Chancery, and of originall writs and Commiſſions iſſuing out of the ſame, yet none of them doe once mention this Court of Equity. We have alſo conſidered what caſes in this Court of Equity have been reported in our books, and we find none before the reign of H. 6. and in that Kings time, and afterwards plentifully, we then turned our eyes to Acts of Parliaments and Parliament Rols.

[a] Some have thought that the ſtatute of 36 E. 3. gave the Chancelor his firſt authority for his proceeding in courſe of equity, by which it is enacted, That if any man think himſelfe grieved contrary to any of the Articles above written, or others contained in divers ſtatutes, will come to the Chancery or any for him, and thereof make his complaint, he ſhall preſently have there remedy by force of the ſaid Articles and ſtatutes, without elſewhere purſuing to have remedy. But certainly this Act giveth the Chancelor no power to proceed in courſe of equity, but that he grant to the party grieved originall writs which are called remedyall grounded upon any ſtatute for his reliefe, and there is no ſtatute that gives the party grieved remedy in equity. Laſtly, the laſt words of the Act, without elſewhere purſuing to have remedy, doe manifeſt that the meaning of the makers of the Act is to direct the party to be relieved by the Common law, by actions upon theſe ſtatutes, and not elſewhere.

[a] 36 E. 3. cap. 9.

In the Parliament holden 13 R. 2. the Commons petitioned to the King, That neither the Chancelor nor other Counſellor doe make any order againſt the Common law nor that any Judgement be given without due proceſſe of law. Whereunto the Kings anſwer was, The uſages heretofore ſhall ſtand, ſo as the Kings royalty be ſaved. In the ſame Parliament another petition was, That no perſon ſhould appear upon a writ *De quibuſdam certis de cauſis* before the Chancelor or any other of the Councell, where recovery is therefore given by the Common law: Whereunto the Kings anſwer is, The King willeth as his Progenitors have done, ſaving his regalty.

Rot. Par. 13 R. 2. nu. 30.

In the Parliament holden in 17 R. 2. it is enacted at petition of the Commons, That foraſmuch as people was compelled to come before the Kings Councell, or in Chancery, by writs grounded upon untrue ſuggeſtions, that the Chancelor for the time being preſently after that ſuch ſuggeſtions be duly found and proved untrue, ſhall have power to ordain and award damnages according to

17 R. 2. ca. 6.

his

his diſcretion to him which is ſo travelled unduly, as is aforeſaid. This Act extendeth to the Chancelor proceeding in courſe of equity, and extendeth not to a demurrer in law upon a bill, but upon hearing of the cauſe upon theſe words in the Act [duly found and proved:] and this is the firſt Parliament that I find touching this matter. And in the Roll of the ſame Parliament, I finde the firſt decree in Chancery that ever I obſerved, the effect whereof was: John de Windſor complaineth and requireth to be reſtored to the Manors of Rampton, Cottenham and Weſtwick with their appurtenances in the County of Cambridge, the which were adjudged to him by the Kings award, then in the poſſeſſion of Sir John Liſley, and now withholden by Sir Richard le Scrope, who by Champerty bought the ſame: the cauſe was this. Upon a petition of Windſor againſt Liſley, they both compromitted the matter to the Kings order, the King committed the ſame to the Councell, they after digeſting of the ſame made a decree for Windſor under the Priby Seale, they ſend warrant to the Chancelor to confirme the ſame, which was done under the Great Seal by a ſpecial Injunction to Liſley, & to write to the Sherif to execute the ſame. After this, Liſley by petition to the King requireth that the ſame may be determined at the Common law, notwithſtanding any former matter: the King accordingly by Priby Seal giveth warrant to the Chancelor to make a Superſedeas, the which was done by Priby Seal, after which Sir Richard le Scrope bought the ſame. Upon the ripping of the whole matter, this ſale was thought no Champerty, whereupon it was adjudged, that the ſaid Windſor ſhould take nothing by his ſaid ſuit, but to ſtand to the Common law, and that the ſaid Sir Richard ſhould goe without day.

7 E.4.fo.14.

Rot.Par.17 R.2. nu.10. William Courtney ſon of Hugh Earl of Devon, was then Biſhop of Cant. and Lo.Chancelor when this decree was made.

Champerty.

The Commons petitioned that no Writs or Priby Seals be ſued out of the Chancery, Exchequer or other places to any man to appeare at a day upon a pain, either before the King and his Councell, or in any other place, contrary to the ordinary courſe of the Common law: whereunto the King anſwered: That ſuch writs ſhould not be granted without neceſſity.

Rot.Par.2 H.4. nu.69.

Among ſt the petitions of the Commons you ſhall find this, That all writs of Subpœna and Certis de cauſis, going out of the Chancery and the Exchequer, may be enrolled, and not granted of matters determinable at the Common law, on pain that the Plaintif doe pay by way of debt to the Defendant forty pound: whereunto is anſwered, The King will be adviſed.

Rot.Par.3 H.5. nu.46. Edmond Stafford Archb.of York, was Lord Chancelor at this time.

It is enacted, to endure untill the next Parliament, that the exception (how that the party hath ſufficient remedy at the Common law) ſhall diſcharge any matter in Chancery. At the next Parliament you ſhall find a petition in theſe words, No man to be called by Priby Seal or Subpœna to anſwer any matters but ſuch as have no remedy by the Common law, and that to appear ſo by the teſtimony of two Juſtices of either Bench, and by Indenture between them and the Plaintif, which Plaintif ſhall always appeare in proper perſon, and find ſurety by recognizance to proſecute with effect the matters of the Bill only, and to anſwer dammages if the ſame fall out againſt the Plaintif.

Rot.Par.9 H.5. nu.15.
Rot.Par.1 H.6. nu.41.

Never good Petition in Parliament dieth, but firſt or laſt will take effect. Vid.ſup.pa.32.

But in anno 15 H.6. for a perpetuall law, and for the true juriſdiction of this Court it is enacted in theſe words,

15 H.6.ca.4.

Item, foraſmuch as divers perſons have before this time been greatly grieved by writs of *Subpœna*, purchaſed for matters determinable by the Common law of this land, to the great dammage of ſuch perſons ſo vexed, in ſubverſion, and impediment of the Common law aforeſaid; Our Soveraign Lord the King will, that the ſtatutes thereof made ſhall be kept after the form and effect of the ſame. And that no Writ of *Subpœna* be granted from henceforth till ſurety be found to ſatisfie the party ſo grieved and vexed for his dammages and expences, if ſo be that the matter may not be made good, which is contained in the bill. In Anno 31 H.6. cap.2. There is a Proviſo in theſe words. Provided that no matter determinable by the law of this

39 H.6.fo.26. 4 E.4.8.14 E.4.1. 16 E.4.9.b. 18 E.4.13. 6 E.4.10.b. 7 H.7.12. Forſc.ca.34. Rot.Par.14 E.4. nu.5. William Shetfords caſe Doct.& Stud. cap.18.24.50. 31 H.6.ca.2.

Realm

Realm ſhall be by the ſaid Act determined in other form then after the courſe of the ſame law in the Kings Courts having determination of the ſame law.

Trin. 2 Jac.

Tr. 2 Jac. Regis, upon ſuit made to the King for erecting of a new office for taking of ſurety according to the ſaid Act of 15 H. 6. cap. 4. the King referred the cauſe to Popham Chief Juſtice, who upon conference with the Judges in Fleetſtreet, reſolved that the ſurety was by force of that Act to be by obligation, and to be made by the party grieved himſelfe, becauſe it concerneth his dammages and coſts, and the Court was to ſet down the forme and ſumme of the obligation, and in the end the ſuit prevailed not.

* Paſch. 29 El. in Scaccario Woods caſe. Vide 7 El. Dier 238. Seignior Shandois caſe.

* Paſch. 29 Eliz. in Scaccario, In Woods caſe adjudged upon the ſtatute of 2 E. 6. cap. 13. for the like reaſon, that the forfeiture for non payment of tithes ſhall goe to the party grieved.

¶ *Reaſons: 1. à majori ad minus.* Rot. Par. 2 R. 2. nu. 18.

1. Rot. Par. 2 R. 2. nu. 18. The high Court of Parliament relieveth but ſuch as cannot have remedy but in Parliament.

Rot. Par. 13 R. 2. nu. 10.

The Parliament for matters determinable at the Common law doth remit the parties thereunto.

2 *Regula.*

2. Nunquam decurritur ad extraordinarium, ſed ubi deficit ordinarium.

3.

3. Whereas matters of fact by the Common law are triable by a Jury of twelve men, this Court ſhould draw the matter ad aliud examen, that is, to judge upon depoſition of witneſſes, which ſhould be but evidence to a Jury in actions reall, perſonall, or mixt.

37 H. 6. 14. 27 H. 8. 18.

This Court of Equity proceeding by Engliſh Bill is no Court of Record, and therefore it can bind but the perſon only, and neither the eſtate of the Defendants lands, nor property of his goods or chattels.

Trin. 3 Jac Reg. in Scaccario. Sir Thomas Themilthorps caſe.

Egerton Lord Chancelor impoſed a fine upon Sir Tho. Themilthorp Knight, for not performing his decree in Chancery concerning Lands of inheritance, and extreated the ſame into the Exchequer: and upon proceſſe the party appearing pleaded that the fine was impoſed by the Lord Chancelor for not performance of his decree, and that he had no power to aſſeſſe the ſame. The Attorney Generall confeſſed the plea to be true, & petiit adviſamentum curiæ, concerning the power of the Chancelor in this caſe: and upon debate of the queſtion in Court, and good adviſement taken, it was adjudged that the Lord Chancelor had no power to aſſeſſe any ſuch fine, for then by a mean he might bind the intereſt of the land where he had no power, but of the perſon only, and thereupon the ſaid Sir Thomas Themilthorp was diſcharged of the ſaid fine.

Wallers caſe.

Afterward the ſaid Lord Chancelor decreed againſt Waller certain lands, and for not performance of the decree impoſed a fine upon him, and upon proceſſe out of the Court of Chancery extended the lands that Waller had in Shrop. &c. whereupon Waller brought his Aſſiſe in the Court of Common pleas, where the opinion of the whole Court agreed in omnibus, with the Court of Exchequer.

¶ *The Judge of this Court of Equity, &c.*

The Lord Chancelor or the Lord Keeper is ſole Judge both in this Court of Equity, and in the Court concerning the Common law; but in caſes of weight or difficulty he doth aſſiſt himſelfe with ſome of the Judges of the Realm, and no greater exception can be taken hereunto then in caſe of the Lord Steward of England being ſole Judge in triall of the Nobility, who alſo is aſſiſted with ſome of the Judges.

For this Court of Equity the ancient rule is good. Three things are to be judged in Court of Conſcience: Covin, Accident, and breach of confidence.

All covins, frauds, and deceits, for the which is no remedy by the ordinary courſe of law.

Accident, As when a ſervant an Obligor, Mortgagor, &c. is ſent to pay the mony on the day, and he is robbed, &c. remedy is to be had in this Court againſt the forfeiture, and ſo in the like.

The third is breach of truſt and confidence, whereof you have plentifull authorities in our books.

The

The caſe in the Chantery betweene the Earl of Worceſter and other Plaintiffs, and Sir Moyl Finch and Eliz. his wife Defendants, was this. The Queen being ſeiſed of the Mannor of Raveſton and of certaine lands in Stokegoldington, (which the Plaintiff pretended to be a Mannor either in right or reputation) granted by her Letters Patents the Mannors of Raveſton and Stokegoldington to the ſaid Sir Moyl and John Awdelye, and their heirs: but this was upon confidence, that they ſhould grant the Mannor of Raveſton to Sir Thomas Henage and Anne his wife, and to the heirs of Anne: and the Mannor of Stokegoldington to Sir Thomas and Anne, and the heirs of Sir Thomas. Sir Moyle and Awdelye by deed indented and inrolled Termino Trin. 1588. 30 Eliz. in this Court for a thouſand pound bargained and ſold to Sir Thomas Henage and his wife the Mannors of Raveſton and Stokegoldington, and the Scite of the Priory of Raveſton in the County of Buck. and all other their lands, tenements and hereditaments in Raveſton, Weſton, Pedington, and Stokegoldington in the County of Buck. To have and to hold the Mannor of Raveſton and the Scite of the ſaid Priory, and all the premiſſes in Raveſton, Weſton, Pedington, and Stokegoldington (other then the ſaid Mannor of Stokegoldington) to the ſaid Sir Thomas and Dame Anne, and the heirs of the ſaid Dame Anne: and to have and to hold the ſaid Mannor of Stokeg. to the ſaid Sir Thomas and Dame Anne, and to the heirs of Sir Thomas. Sir Thomas had iſſue by the ſaid Dame Anne the ſaid Elizabeth one of the Defendants his only child, and afterwards the ſaid Dame Anne died: the Defendant alleadged that Sir Thomas was diſſeiſed of Stokegoldington, and the Plaintiff denied it. And after Sir Thomas by deed indented and inrolled, bargained and ſold the Mannor of Stokegoldington to the Plaintiffs for payment of his debts and died: and for payment of his debts, they exhibited their bill againſt Sir Moyl, and the ſaid Eliz. his wife, for the ſaid Mannor of Stokegoldington, and the Lord Chancelor decreed it for the Plaintiff. And upon a petition preferred by the Defendants to Queen Elizabeth, ſhe referred the conſideration of the whole caſe to all the Judges of England: and after hearing of the Counſell of both parts on ſeverall dayes, and conference betweene themſelves, theſe points for rule in equity were reſolved. Firſt, that if there were any diſſeiſon, that nothing paſſed to the Plaintiff either in right or equity, for the diſſeiſor was ſubject to no truſt, nor any Subpœna was maintainable againſt him, not onely becauſe he was in the poſſeſſion, but becauſe the right of inheritance or freehold was determinable at the Common law and not in the Chancery, neither had Ceſti que uſe (while he had his being) any remedy in that caſe. Secondly, it was reſolved by all the Juſtices, that admitting that Sir Thomas Henage had a truſt, yet could not he aſſign the ſame over to the Plaintiff, becauſe it was a matter in priviti betweene them, and was in nature of a choſe in action, for he had no power of the land, but onely to ſeek remedy by Subpœna, and not like to ceſti que uſe, for thereof there ſhould be poſſeſſio fratris, and he ſhould be ſworn on Juries in reſpect of the uſe, and he had power over the land by the ſtatute of 1 R. 3. cap. and if a bare truſt and confidence might be aſſigned over, great inconvenience might thereof follow by granting of the ſame to great men, &c. Thirdly, when the land deſcended to Elizabeth one of the Defendants, as heir to her mother, and the truſt deſcended to her from her father, the truſt was drowned and extinguiſhed. Fourthly, when any title of freehold or other matter determinable by the Common law come incidently in queſtion in this Court, the ſame cannot be decided in Chancery, but ought to be referred to the triall of the Common law where the party grieved may be relieved by error, attaint, or by action of higher nature. And when the ſuit is for evidences, the certainty whereof the Plaintiff ſurmiſeth he knoweth not, and without them he ſuppoſeth that he cannot ſue at the Common law: It was reſolved that if the Defendant make no title to the land, then the Court hath juſt juriſdiction to proceed for the evidence; but if he make title to the land by his anſwer, then the Plaintiff ought not to proceed, for otherwiſe by ſuch a ſurmiſe, inheritances, freeholds, and matters determinable

Mich. 42 & 43 El. in Cancellar. Sir Moyl Finches caſe.

A Diſſeiſor ſubject to no truſt.

A truſt cannot be aſſigned over. 22 El. Dier fo. 369. pl. 50.

Matters determinable by the Common law cannot be decided in Chancery. Suit for Evidéce.

by the Common law ſhall be decided in Chancery in this Court of Equity. And thus were theſe points reſolved by Sir John Popham, Sir Edmond Anderſon, Sir William Periam, and Walmeſlye, Gawdye, Fenner, and Kingeſmill Juſtices, and Clarke and Savill Barons of the Exchequer; and all this amongſt other things they certified under their hands into the Chancery, and thereupon the former decree was reverſed. And in debating of this caſe it was reſolved by the two Chief Juſtices, Chief Baron, and divers other Juſtices, that if a man make a conveyance, and expreſſe an uſe, the party himſelf or his heirs ſhall not be received to averre a ſecret truſt, other then the expreſſe limitation of the uſe, unleſſe ſuch truſt or confidence doe appear in writing, or otherwiſe declared by ſome apparent matter. And Popham ſaid, that covin accident, and breach of confidence were within the proper jurisdiction of this Court.

Mich. 39 & 40 El. in Cancellar'.

Thomas Throckmorton Eſquire exhibited a bill in this Court againſt Sir Moyl Finch Knight, claiming a leaſe of the manners of R. and S. for many years to come, and ſhew clear matter in equity to be relieved againſt a forfeiture pretended by Sir Moyle for breach of a condition where there was no default in the Plaintif, &c. Unto which bill the Defendant pleaded this plea, that for the triall of the forfeiture of which leaſe, he made a leaſe for years to one privileged in Exchequer, who brought an Ejectione firme againſt the Plaintif, and upon pleading a demurrer in law, the Leſſee had judgment to recover againſt Thomas Throckmorton (now Plaintif in Chancery:) whereupon Thomas Throckmorton brought a writ of error in the Exchequer Chamber, where upon due proceeding the judgment was affirmed, and demanded judgment, if after theſe judgments given at the Common law he ought to be drawn to make any further anſwer in this Court of Equity. And Egerton Lord Chancelor delivered his opinion in Court, that the Defendant ſhould anſwer to the bill: and forasmuch as the caſe was of great conſequence, the conſideration of the demurrer was by the Queen referred to all the Judges of England: before whom the Councell of Throckmorton ſaid, that the intent of the Lord Chancelor was not to impeach the ſaid judgments, but conſelling the ſaid judgments, to be relieved upon matter in equity: As if a man hath (as he is adviſed) two matters to aid him, matter at the Common law, and matter in equity, and being impleaded at the Common law, doth by advice of all his councell allay the Common law, where his adverſary prevaileth againſt him, and hath judgment accordingly, yet in this caſe the party may, confeſſing the judgment, ſue to be relieved upon a collaterall matter in equity: and thereupon they ſhewed ſome preſidents in time of H. 8, E. 6. &c. and one in the point between Ward and Fulwood. But upon great deliberation it was reſolved by all the Judges of England, that the plea of Sir Moyle Finch was good, and that the Lord Chancelor ought not to examine the matter in equity after the judgment at the Common law: for though the Lord Chancelor (as hath been ſaid) would not examine the judgment, yet he would by his decree take away the effect of the judgment: and for the preſidents, they were grounded upon the ſole opinion of the Lord Chancelor, and paſſed ſub ſilentio. But that ſuch a courſe ſhould be permitted, it ſhould be not only full of inconvenience, but directly againſt the laws and ſtatutes of the Realm, againſt which no preſident or preſcription can prevail; * which you may read at large in the Third part of the Inſtitutes, cap. Premunire. Which reſolution of the Judges was ſignified by Popham Chief Juſtice to the Lord Chancelor, and thereupon no further proceeding was againſt Sir Moyl Finch, but his plea ſtood.

* 27 E. 3. cap. 1. 4 H. 4. cap. 22. &c. in the preamble. Doct. & Stud. 30. W. 2. ca. 5. vid. paſch. 5 E. 4. Coram rege Rot. 35. Sir Simon Norres caſe. Nota.

Mich. 37 & 38 El. in Cancellar'.

In a caſe depending in Chancery by Engliſh bill between Mears Plaintif and Saint-John and his wife Adminiſtratrix of John Alnion Defendant, the caſe was this: That the Intеſtate took the profits of the lands of the Plaintif being within age by force of a truſt repoſed in him by the father of the Plaintif by his laſt Will, the yearly value of which lands was fourſcore pounds per annum, and the Intеſtate took the profits from the 23 year of Queen El. until the 33 year of her reign, and with parcell of the profits purchaſed lands in fee which deſcended to his heir, and left aſſets to his Adminiſtratrix one of the Defendants

dants to ſatiſfie the plaintif, all debts paid. The queſtion was, whether in this caſe the Adminiſtratrix might not be charged in equity for the ſaid mean profits: And Sir Thomas Egerton maſter of the Rols ſaid, that he had ſeen a caſe in Chancery in Anno 34 H. 6. reſolved by all the Judges of England remaining in the Tower, that where the Feoffees to uſe took the profits of the land, and received the rents, and made their Executors, and died leaving aſſets to ſatiſfie all debts over and above the ſaid rents and profits, that the Executors ſhould be charged to ſatiſfie ceſti que uſe for the ſaid rents and profits, and accordingly it was decreed in Mears caſe againſt the Defendant: but whether the heir ſhould be contributory or no, it was doubted.

Withams caſe in the Chancery was, that a tearm for years was granted to the uſe of a feme ſole, ſhe took husband and died, whether the husband ſhould have the uſe, or the Adminiſtrators of the feme, was referred to the Judges; and by them it was reſolved, that the Adminiſtrators ſhould have it, and not the husband, becauſe that this truſt of a feme was a thing in privity, and in nature of an action for which no remedy was but by writ of Subpœna. And ſo it was reſolved by the Juſtices in Waterhouſes caſe, Hil. 8 Eliz. Eborum, for the truſt runneth in privity in this caſe, and a husband ſhould not be tenant by the curteſie of an uſe, nor the Lord of the Villain ſhould have it at the Common law.

Paſch. 32 El. in Cancellaria. Withams caſe. Eborum. Vide 7 E. 4. 14 & 18 E. 4. 11. & 12.

A man poſſeſſed of a tearm for years in lands, by his laſt Will deviſed the ſame to one and the heirs of his body begotten, made his Executors and died; the Deviſee entreth by the aſſent of the Executors, hath iſſue and alien the tearm and dieth: this alienation barreth the iſſue, for a tearm for years cannot be entayled. And afterwards Anno 31 Eliz. in a caſe depending in Chancery between Higgins and Milles it was certified by the Lord Anderſon and Juſtice Walmſley (to whom it was referred) that no eſtate tail could be of a tearm, and that the alienation of the Deviſee did bar the iſſue.

Trin. 28. El. adjudge in the Kings Bench, in Peacocks caſe.

31 Eliz. between Higgins and Mils in Cancellaria.

In a Præmunire between John Perrot Plaintif, and T. M. H. W. and others Defendants it was reſolved by Sir Chriſtoper Wray Chief Juſtice, and the Court of Kings Bench, that the Queen could not raiſe a Court of Equity by her Letters Patents, and that there could be no Court of Equity but by Act of Parliament, or by preſcription time out of mind of man. But the Queen might grant power tenere placita or conuſans de plea, for all muſt judge according to one ordinary rule of the Common law, but otherwiſe it is of proceedings extraordinary without any certain rule.

Mic. 26. & 27 El. Coram Rege. Perrots caſe. 10 H. 6. 15. in London by preſcription. Nota this reſolution is againſt the Court of Requeſts, See hereafter, cap. 9.

Theſe caſes which upon ſo great and mature deliberation have been reſolved by the Judges of the Realm, and whereunto we were privy and well acquainted with, we have thought good to report, and publiſh for the better direction in like caſes hereafter.

¶ *How he is created.* Camden p. 131.

He is made Lord Chancelor of England, or Lord Keeper of the Great Seal, per traditionem magni ſigilli ſibi per dominum regem, and by taking his oath. Forma Cancellarium conſtituendi regnante Henrico ſecundo fuit appendendo magnum Angliæ ſigillum ad collum Cancellarii electi.

Some have gotten it by Letters Patents, [a] at will, and [b] one for tearm of his life; but it was holden void, becauſe an ancient office muſt be granted, as it hath been accuſtomed.

[a] 35. H. 6. 3. B. of Winch. 1 H. 6. nu. 16.

[b] Cardinal Woolſey.

[c] It is enacted and declared, that the Common law of this Realm is and alwayes was, and ought to be taken, that the Keeper of the Great ſeal of England for the time being hath alwayes had, uſed, and executed, and from thenceforth may have, take, uſe, and execute the ſame and the like place, authority, preheminence, juriſdiction, execution of laws &c. as the Lord Chancelor of England for the time being lawfully uſed, &c. And ſo it appeareth in 18 E. 3. nu. 41. that the Lord Chancelor, or Lord Keeper for the time being ought to have conuſance.

[c] 5 El. ca. 18.

Rot. Par. 18 E. 3. nu. 41.

[a] Rot. Par. 1 H. 6. nu. 13, 14. 13 R. 2 nu. 7. Vide Camden ub: supra.

[a] I finde that King H. 5. had two Great Seals, one of gold, which he delivered to the Bishop of Duresme, and made him Lord Chancelour of England, and another of silver, which King Henry the 5 delivered to the Bishop of London to keep.

[b] William de Ayremin Garden des Rolles del Chancelar' & ses compagnions gardens del Grand Seale. At this time was Robert Burnell Bishop of Bath and Wels Chancelour of England.

[b] Stat. de forma mittendi extract. in Scaccarium, Anno 16 E. 1. vet. Mag. Carta, 2 part. fo. 47. b.

[c] It is to be observed, that where divers ancient statutes speak of the Chancelour and of his Lieutenant, it must of necessity be intended of such a Lieutenant, as the law doth allow of, and that cannot be of a Deputy, for the Chancelour cannot make a Deputy; but Locum tenens is to be taken for one that holdeth the place, or hath equall authoritie of the Chancelour, and that is Custos Magni Sigilli: and this agreeth with the judgement of the said Parliament in 5 Eliz. But all questions are now taken away by the said Act of 5 Eliz. and at this day there being but one Great Seale, there cannot be both a Lord Chancelour and a Lord Keeper of the Great Seale at one time, because both these are but one Office, as it is declared by the said Act.

[c] An. 27 E. 1. de libertatibus perquirendis. Vet. Mag. Carta, part. 1. fo. 126, & 2 part fo. 37, &c.

¶ *Cancellarius unde.*

It is said before, that the Chancelour by his ordinary power may hold plea of Scire fac' to repeale the Kings Letters Patents under the Great Seal being alwayes inrolled in this Court, which we (to make a true derivation of his name) shall now particularly touch. This Writ of Scire fac' to repeale Letters patents doth lye in this ordinary course of Justice in three cases. The first, when the King by his Letters patents doth grant by severall Letters patents one and the self same thing to severall persons, the former Patentee shall have a Scire fac' to repeal the second patent. Secondly, when the King granteth any thing that is grantable upon a false suggestion, the King by his prerogative Jure Regio may have a Scire fac' to repeal his own grant. Thirdly, when the King doth grant any thing, which by law he cannot grant, he Jure Regio (for advancement of justice and right) may have a Scire fac' to repeal his owne Letters patents. Now the Judgement in all these three cases is, Quod prædictæ literæ patentes dicti domini Regis revocentur, cancellentur, evacuentur, adnullentur, & vacuæ, & invalidæ pro nullo penitus habeantur, & teneantur; ac etiam quod irrotulamentum eorundem cancelletur, cassetur, & adnihiletur, &c. Hereof our Lord Chancelour of England (for soyein Chancelours, it may be, have not like authority) is called Cancellarius, à cancellando, *i.* à digniori parte, being the highest point of his jurisdiction to cancell the Kings Letters patents under the Great Seale, and damming the inrolment thereof, by drawing strikes through it like a lettice.

6 E. 4. 9. Dier 3 Eliz. 137. 2 E. 3. 7. 17 E. 3. 59. 21 E. 3. 47.

Lib. 2 fo. 14. &c.

¶ *The Lord Chancelours Oath.*

[a] Rot. Par. 10 R. 2. Rot. 8. the Oath recited. Vid. Rot. Parl. 11 H. 4. 1. nu. 28.

[b] Because he hath power of judicature as is aforesaid.

[c] 10 R. 2. Rot. Par. nu. 8. 2 H. 4. nu. 10. 15 E. 3. nu. 10. 15. 37. 41. 42.

[d] Laine is an ancient French word, and signifieth to hide.

[e] Rot. Parl. 10. R. 2. nu. 6 7, 8. &c. the case of *Mic. de la Pole* Chancelour of England.

And all this which hath been said concerning the office of the Lord Chancelour, or Lord Keeper is included within his [a] Oath, which followeth in these words, and consisteth upon six parts. He shall sweare,

1. That well and truly he shal serve our Soveraigne Lord the King and his [b] people in the office of Chancelour (or Lord Keeper.)

2. That he shall doe right to all manner of people, poore and rich, after the [c] lawes and usages of the Realm.

3 That he shall truly counsell the King, and his counsell he shall [d] layne and keep.

4. That he shall not know nor suffer the hurt or disheriting of the King, or [e] that the rights of the Crowne be decreased by any meanes, as far as he may let it.

5. And if he may not let it, he shall make it clearly and expressly to be known to the King, with his true advice and counsell.

6. And that he shall do and purchase the Kings profit in all that he reasonably may. As God him help, and by the Contents of this Book.

Articles

Articles againſt Cardinall Woolſey.

Now for as much as the Articles exhibited to King H. 8. 1 die Decembris Anno 21 of his reign, by the Lords and others of his Priby Councell (whereof Sir Thomas More Lord Chancelor was one) and by two of the principall Judges of the Realm againſt Cardinall Woolſey, doe in divers of the Articles concern the jurisdiction of the Chancery, (viz. the 20 and 26 Articles, &c.) and other titles of this fourth part of the Inſtitutes, we have thought good juſtly and truely to tranſcribe from the very Originall under the proper hands of the Lords and others of the Priby Councell, and of the ſaid Judges (which we have ſeen and had in our cuſtody) and have compared this Tranſcript with the Originall it ſelfe, and have (becauſe they are of great weight and uſe to many purpoſes) tranſcribed it de verbo in verbum without omiſſion of any thing, as matters of that nature ought to be: and the rather, for that in our Chronicles they are very untruly rehearſed: and before this time (that we finde) the true Articles were never printed. Vid. Artic. 20, 21, 26. 38, 41, 42, 44, 46.

Conſtrained by neceſſity of our fidelity and conſcience, complaine and ſhew to your moſt Royal Majeſty, we your Graces humble, true, faithfull, and obedient ſubjects: that the Lord Cardinall of York, lately your Graces Chancelour, preſuming to take upon him the authority of the Popes Legat *De latere*, hath by divers and many ſundry wayes and faſhions committed high and notable grievous offences, miſuſing, altering, and ſubverting the order of your Graces laws: and otherwiſe contrary to your High Honour, Prerogative, Crown, Eſtate, and Dignity regall, to the ineſtimable great hinderance, diminution, and decay of the univerſall wealth of this your Graces Realm. And it is touched ſummarily and particularly in certaine Articles here following, which be but a few in comparison of all his enormities, exceſſes, and tranſgreſſions committed againſt your Graces lawes. That is to ſay:

1. Firſt, where your Grace & Noble Progenitors within this your Realm of England, being Kings of England, have been ſo free, that they have had in all the world none other Soveraigne, but immediate ſubject to Almighty God in all things touching the regalty of your Crown of England, and the ſame preeminence, prerogative, jurisdiction, lawfull and peaceable poſſeſſion your Grace and your noble Progenitors have had, uſed, and enjoyed, without interruption or bashfulneſſe therefore by the ſpace of 200 yeares and more: whereby your Grace may preſcribe againſt the Popes Holineſſe, that he ſhould not, nor ought to ſend or make any Legat, to execute any authority Legatine contrary to your Graces prerogative within this your Realme. Now the Lord Cardinall of York being your ſubject and naturall liege man, hath of his high, ergallous, and inſatiable minde, for his own ſingular advancement and profit, in derogation, and to the great emblemiſhment and hurt of your ſaid regall jurisdiction and prerogatives, and the long continuance of the poſſeſſion of the ſame, hath obtained authority Legatine: by reaſon whereof he hath not onely hurt your ſaid preſcription, but alſo by the ſaid authority Legatine, hath ſpoyled and taken away from many houſes of Religion within this your Realm much ſubſtance of their goods. And alſo hath uſurped upon all your Ordinaries within this your Realme much part of their jurisdiction, in derogation of your prerogative, and to the great hurt of your ſaid Ordinaries, Prelates, and Religions.

The ſoveraignty, prerogative regall jurisdiction, and freedome of the Crowne of England. Preſcribe. Cardinal of York. Authority Legatine. Spoyled many houſes of religion. Uſurped upon Ordinaries.

2. Alſo the ſaid Lord Cardinall being your Ambaſſadour in France, made a treaty with the French King for the Pope, your Majeſty not knowing any part thereof, nor named in the ſame; and binding the ſaid French King to abide his order and award if any controverſie or doubt ſhould ariſe upon the ſame, betwixt the ſaid Pope and the French King. Ambaſſadour.

3. Alſo the ſaid Lord Cardinall being your Ambaſſadour in France, ſent a Commiſſion to Sir Gregory de Caſſalis under your Great Seale in your Graces name, to conclude a treaty of Amity with the Duke of Ferrare, without any commandment Ambaſſadour.

commandement or Warrant of your Highnes, nor your said Highnesse advertised or made privy to the same.

4. Also the said Lord Cardinall, of his presumptuous mind, in divers and many of his Letters and instructions sent out of this Realme to outward parts, had joyned himself with your Grace, as in saying and writing, The King and I would ye should do thus. The King and I doe give unto you our hearty thankes. Whereby it is apparent that he used himself more like a fellow to your Highnes, then like a subject.

The King and I

5 Also, where it hath ever been accustomed within this Realm, that when Noble Men doe sweare their household servants, the first part of their oath hath been, that they should be true liege men to the King and his Heirs Kings of England: The same Lord Cardinall caused his servants to be onely sworne to him, as if there had been no Soveraign above him.

Oath.

6 And also whereas your Grace is our Soveraign Lord and Head, in whom standeth all the surety and wealth of this Realm; the same Lord Cardinall knowing himselfe to have the foule and contagious disease of the Great Pocks broken out upon him in divers places of his body, came daily to your Grace, rowning in your eare, and blowing upon your most noble Grace with his perilous and infective breath, to the marvellous danger of your Highnesse, if God of his infinite goodnesse had not better provided for your Highnesse. And when he was once healed of them, he made your grace to beleeve, that his disease was an Impostume in his head and of none other thing.

Great Pocks.

7 Also the said Lord Cardinall by his authority Legatine, hath given by prevention the Benefices of divers persons, as well Spirituall as Temporall, contrary to your Crown and dignity, and your Lawes and Statutes therefore provided: by reason whereof he is in danger to your grace of forfeiture of his lands and goods, and his body at your pleasure.

Provision, Premunire.

8. Also the said Lord Cardinall taking upon him otherwise then a true Counsellour ought to doe, hath used to have all Ambassadors to come first to him alone, and so hearing their charges and intents, it is to be thought he hath instructed them after his pleasure and purpose before that they came to your presence, contrary to your High commandement by your Graces mouth to him given: and also to other persons sent to him by your Grace.

Counsellour. Forein Ambassadors.

9. Also the said Lord Cardinall hath practised so, that all manner Letters sent from beyond the sea to your Highnesse have comen first to his hands, contrary to your high commandement by your owne mouth, and also by others sent to him by your Grace: by reason whereof, your Highnesse nor any of your Councell had knowledge of moe matters but of such as it pleased him to shew them; whereby your Highnesse and your Councell have been compelled of very force to follow his devices, which oftentimes were set forth by him under such crafty and covert meanings, that your Highnesse and your Councell have oftentimes been abused: insomuch that when your Councell have found and put divers doubts and things which afterward have ensued, he to abuse them used these words, [I will lay my head that no such thing shall happen.]

Letters sent from beyond sea. First to him.

Councell.

10. Also the said Lord Cardinall hath practised, that no manner of person having charge to make espiall of things done beyond the sea, should at their returne come first to your Grace, nor to any other of your Councell, but onely to himselfe: and in case they did the contrary, he punished them for their so doing.

Forein intelligence to him, &c.

11. Also the said Lord Cardinall hath granted licenses under your Great Seal, for carrying out of Grain and other Victuals after the restraint hath been made thereof, for his own lucre and singular advantage of him and his servants for to send thither as he bare secret favour, without your Graces Warrant or knowledge thereof.

Licenses to transport grain and victuall.

12. Also the said Lord Cardinall used many years together not onely to write unto all your Ambassadours resident with other Princes in his own name, all advertisements concerning your Graces affairs being in their charge, and in the same his Letters wrote many things of his own mind without your Graces

Ambassidours resident with other Princes.

pleasure

pleaſure knowen, concealing divers things which had been neceſſary for them to know; but alſo cauſed them to write their advertiſements unto him. And of the ſame Letters he uſed to conceale for the compaſſing of his purpoſe many things both from all your other Counſellours, and from your ſelf alſo.

13. Alſo where good hoſpitality hath been uſed to be kept in houſes and places of religion of this Realm, & many poore people thereby relieved, the ſaid hoſpitality & relief is now decayed & not uſed: and it is commonly reported that the occaſion thereof is, becauſe the ſaid Lord Cardinall hath taken ſuch impoſitions of the Rulers of the ſaid houſes, as well for his favour in making of Abbots and Priors, as for his viſitation by his authority Legatine. And yet nevertheleſſe taketh yearly of ſuch Religious houſes, ſuch yearly and continuall charges, as they be not able to keep hoſpitalitie as they were uſed to doe: which is a great cauſe that there be ſo many Vagabonds, Beggers, and Thieves.

Hoſpitality in houſes of Religion decayed.
Impoſition.
Yearly charges.

14. Alſo where the ſame L. Cardinal ſaid before the ſuppreſſion of ſuch houſes as he hath ſuppreſſed, that the poſſeſſions of them ſhould be ſet to ferme among your lay ſubjects after ſuch reaſonable yearly rent as they ſhould well thereupon live, and keep good hoſpitality: and now the demeſne poſſeſſion of the ſame houſes ſince the ſuppreſſion of them had been ſurveyed, mete, and meaſured by the Acre, and be now ſet above the value of the old rent. And alſo ſuch as were ſeruors by Covent ſeal, and copieholders be put out and amoved of their fermes, or elſe compelled to pay new fine contrary to all equitie and conſcience.

Suppreſſion of houſes.
Reaſonable rents.
Above the value.
New fine.

15. Alſo the ſaid Lord Cardinall ſitting among the Lords and other of your moſt honourable Privie Councell, uſed himſelf, that if any man would ſhew his mind, according to his duty, contrary to the opinion of the ſaid Cardinall, he would ſo take him up with his accuſtomable words, that they were better to hold their peace then to ſpeak, ſo that he would heare no man ſpeake but one or two great perſonages, ſo that he would have all the words himſelfe, and conſumed much time with a fair tale.

Abuſed the Privy Councell.
All the words himſelf.

16. Alſo the ſaid Lord Cardinall by his ambition and pride hath hindered and undone many of your poore ſubjects for want of diſpatchment of matters, for he would no man ſhould meddle but himſelf, inſomuch that it hath been affirmed by many wiſe men, that ten of the moſt wiſeſt and moſt expert men in England were not ſufficient in convenient time to order the matters that he would retain to himſelfe. And many times he deferred the ending of matters, becauſe that ſuiters ſhould attend and wait upon him, whereof he had no ſmall pleaſure, that his houſe might be replenished with ſuiters.

Ambition and pride.
Want of diſpatch.
No man to meddle but himſelfe.
Suiters to attend.

17. Alſo the ſaid Lord Cardinall by his authority Legatine hath uſed, if any ſpirituall man having any riches or ſubſtance, deceaſed, he hath taken their goods as his own, by reaſon whereof their wills be not performed: And one meane he had to put them in fear, that were made Executors, to refuſe to meddle.

Taketh goods of Spirituall men deceaſed.

18. Alſo the ſaid Lord Cardinall conſtrained all Ordinaries in England yearly to compound with him, or elſe he will uſurpe half or the whole of their juriſdiction by prevention, not for good order of the Dioceſſes, but to extort treaſure: for there is never a poore Archdeacon in England, but that he paid yearly to him a portion of his living.

All Ordinaries, &c. to compound with him.

19. Alſo the ſaid Lord Cardinall hath not only by his untrue ſuggeſtion to the Pope chamefully ſlandered many good religious houſes, and good vertuous men dwelling in them, but alſo ſuppreſſed by reaſon thereof above thirty houſes of Religion. And where by authority of his Bull he ſhould not ſuppreſſe any houſe, that had mo men of Religion in number above the number of 6 or 7, he hath ſuppreſſed divers houſes that had above the number. And thereupon hath cauſed divers offices to be found by verdict untruly, that the Religious perſons ſo ſuppreſſed had voluntarily forſaken their ſaid houſes, which was untrue, and ſo hath cauſed open periury to be committed, to the high diſpleaſure of Almighty God.

Slandered religious houſes to the Pope.
By authority of his Bull ſuppreſſed 30 houſes of Religion.
Cauſed divers Offices to be found untruly.
Periury.

20. Alſo the ſaid Lord Cardinall hath examined divers and many matters in the Chancery after judgement thereof given at the Common law, in ſubverſion

Examined matters in Chancery after judgements

of

of your lawes, and made some persons restore again to the other party condemned that, that they had in execution by vertue of the Judgement at the Common law.

Injunctions.

21. Also the said Lord Cardinall hath granted many Injunctions by Writ, and the parties never called thereunto, nor Will put in against them: and by reason thereof, divers of your subjects have been put from their lawfull possession of their lands and tenements. And by such means he hath brought the more party of the suiters of this your Realm before himself, whereby he and divers of his servants have gotten much riches, and your subjects suffered great wrongs.

His servants rich.

The Popes pardons.

22. Also the said Lord Cardinall to augment his great riches hath caused divers pardons granted by the Pope to be suspended, which could not be revived, till that the said Lord Cardinall were rewarded, and also have a yearly pension of the said pardon.

Oppression.

23. Also the said Lord Cardinall not regarding your lawes nor justice, of his extort power hath put out divers and many fermors of his lands, and also Patentees of the Arch-bishoprick of York and the Bishoprick of Winchester, and of the Abbey of St. Albons, which had good and sufficient grant thereof by your lawes.

Elections of Abbots, Priors, &c.

24. Also the same Lord Cardinall, at many times when any houses of Religion have been void, he hath sent his Officers thither, and with crafty perswasions hath enduced them to compromit their election in him: And that before he named or confirmed any of them, he and his servants received so much great goods of them, that in manner it hath been to the undoing of the house.

Visited.

Extortion.

25. Also by his authority Legatine, the same Lord Cardinall hath visited the most part of the religious Houses and Colledges of this your Realm, and hath taken from them the twenty fifth part of their livelyhood, to the great extortion of your subjects and derogation of your lawes and prerogative, and no law to bear him so to do.

Injunctions. Threatned Judges

26. Also when matters have been near at judgement by Proces at your Common law, the same Lord Cardinall hath not only given and sent Injunctions to the parties, but also sent for your Judges, and expressly by threats commanding them to defer the judgement, to the evident subversion of your lawes, if the Judges would so have ceased.

Pension out of France.

His son *winter*.

27. Also whereas neither the Bishop of York nor Winchester, nor the Abbey of S. Albons, nor the profit of his Legation, nor the benefit of the Chancery, nor his great pension out of France, nor his Wards, and other inordinate taking could not suffice him, he hath made his son Winter to spend Seven and twenty hundred pounds by the year, which he taketh to his own use, and giveth him not past two hundred pounds yearly to live upon.

Legat *De latere*.

His promise.

Nothing against prerogative or regality.

Or to the prejudice of ordinary jurisdiction.

Breach of promise.

28. Also where the said Lord Cardinall did first sue unto your Grace to have your assent to be Legat de latere, he promised and solemnly protested before your Majestie, and before the Lords both Spirituall and Temporall, that he would nothing do nor attempt by the vertue of his Legacie, that should be contrary to your gracious prerogative or regalitie, or to the damage or prejudice of the Jurisdiction of any Ordinary, and that by his Legacie no man should be hurted nor offended: And upon that condition, and no other, he was admitted by your Grace to be Legate within this your Realm: which condition he hath broken, as is well known to all your Subjects. And when that he made this promise, he was busie in his suit at Rome to visit all the Clergy of England both exempt and not exempt.

Untrue surmise to the Pope of the Clergy.

29. Also upon the suit of the said Lord Cardinall at Rome to have his authority Legatine, he made untrue surmise to the Popes Holinesse against the Clergie of your Realm: which was, that the regular persons of the said Clergie had given themselves in reprobum sensum; which words S. Paul writing to the Romans applyed to abominable sinne: which slander to your Church of England shal for ever remain in the Register at Rome, against the Clergy of this your Realm.

30. Also

30. Alſo the ſaid Lord Cardinall had the more part of the goods of Doctor Smith late Biſhop of Lincoln, Biſhop Savage of Yorke, Maſter Dalbye Archdeacon of Richmont, Maſter Tonyers, Doctor Rothall late Biſhop of Durham, and of Doctor Foxe late Biſhop of Wincheſter, contrary to their wils, and your laws and juſtice. Oppreſſion and extortion.

31. Alſo at the Oier and Terminer at Yorke, Proclamation was made that every man ſhould put in their bils for extortion of Ordinaries, and when divers bils were put in againſt the Officers of the ſaid Lord Cardinall of extortion, for taking twelve pence of the pound for probation of Teſtaments, whereof divers bils were found before Juſtice Fitzherbert and other Commiſſioners, the ſaid Lord Cardinall removed the ſaid Indictments into the Chancery by Certiorari, and rebuked the ſaid Fitzherbert for the ſame cauſe. Extortion of Ordinaries. Indictmen s of extortion of Ord. removed into the Chancery.

32. Alſo the ſaid Lord Cardinall hath buſied and endeavored himſelfe by craft and untrue tales to make diſſention and debate amongſt your Nobles of your Realm, which is ready to be proved. Made debate between the Nobles of the Realm.

33. Alſo the ſaid Lord Cardinals Officers have divers times compelled your ſubjects to ſerve him with Carts for carriage, and alſo his ſervants have taken both Corn and Cattel, Fiſh, and all other Victuall, at your Graces price, or under, as though it had been for your Grace, which is contrary to your laws. Purveyance for him Purveyance at the Kings price, Vid. int. 35, 36.

34. Alſo the ſaid Lord Cardinall hath miſuſed himſelfe in your moſt honourable Court, in keeping of as great eſtate there in your abſence, as your Grace would have done if you had been there preſent in your own perſon. Keeping great eſtate in Court.

35. Alſo his ſervants by virtue of your Commiſſion under your Broad Seal by him to them given, have taken cattel and all other victuall at as low a price as your Purveyors have done for your Grace by your Prerogative, againſt the laws of your Realm. Purveyance. Prerogative in purveyance.

36. Alſo where it hath been accuſtomed that your Purveyors for your honourable houſhold, have had yearly out of your Town and liberty of S. Albons three or four hundred quarters of wheat, truth it is, that ſince the Lord Cardinall had the room of the Abbot, that your ſaid Purveyors could not be ſuffered by him and his officers to take any wheat within the ſaid town or liberty. Purveyance.

37. Alſo he hath divers times given injunctions to your ſervants that have been for cauſes before him in the Star-chamber, that they, nor other for them ſhould make, labour by any manner way, directly or indirectly, to your Grace to obtain your Graces favour or pardon, which was a preſumptuous intent for any ſubject. Injunction not to ſue for pardon for cauſes in the Star-chamber. A great preſumption.

38. Alſo the ſaid Lord Cardinall did call before him Sir John Stanly Knight, which had taken a farm by Covent Seal of the Abbot and Covent of Cheſter, and afterwards by his power and might contrary to right committed the ſaid Sir John Stanly to the priſon of Fleet by the ſpace of a year unto ſuch time as he compelled the ſaid Sir John to releaſe his Covent Seal to one Legh of Adlington, which married one Larks daughter, which woman the ſaid Lord Cardinall kept, and had with her two children. Whereupon the ſaid Sir John Stanly upon diſpleaſure taken in his heart made himſelf Ponke in Weſtminſter, and there died. Oppreſſion. Legh of Adlington. The Card. kept Larkes daughter and had by her two children.

39. Alſo on a time your Grace being at S. Albons according to the ancient cuſtome uſed within your Verge, your Clerk of the Market doing his office, did preſent unto your Officers of your moſt honourable houſhold the prices of all manner of Victuals within the precinct of the Verge. And it was commanded by your ſaid Officers to ſet up the ſaid prices both on the gates of your honorable houſhold, and alſo within the market place within the town of S. Albons, as of ancient cuſtome hath been uſed. And the Lord Cardinall hearing the ſame, preſumptuouſly, not like a ſubject, cauſed the aforeſaid prices which were ſealed with your Graces Seal, accuſtomably uſed for the ſame, to be taken off and pulled down in the ſaid market place, where they were ſet up: and in the ſame places ſet up his owne prices ſealed with his ſeale, and Clerk of the Market. Prices of victuals. Pulled down the price, &c.

would if it had not been letted in semblable manner, vsed your seal standing upon your gates. And also would of his presumptuous minde haue openly set in the stocks within your said town your Clerk of your market. By which presumption and vsurpation your Grace may perceiue that in his heart he hath reputed himselfe to be equall with your realle Majesty.

The Cardinals hat in the Kings coin of groats, &c.

40. Also the said Lord Cardinall of his further pompous and presumptuous minde hath enterprised to ioyn and imprint the Cardinals hat vnder your armes in your coin of groats made at your City of York, which like deed hath not been seen to be done by any subiect within your Realm before this time.

Subpœna.

41. Also where one Sir Edward Jones Clerk Parson of Otewly in the County of Buck' in the eighteenth yeer of your most noble reign let his said Parsonage with all tithes and other profits of the same to one William Johnson by Indenture for certaine yeers, within which yeers, the Deane of the said Cardinals Colledge in Oxenford pretended title to a certaine portion of tithes within the said Parsonage, supposing the said portion to belong to the Parsonage of Chichely, which was appointed to the Priory of Lykeford lately suppressed, where (of truth) the Parsons of Otewly haue been peaceably possessed of the said portion out of the time of minde. Whereupon a Subpœna was directed to the said Johnson to appeare afore the Lord Cardinall at Hampton-Court, out of any tearm, with an Injunction to suffer the said Dean to occupy the said portion. Whereupon the said Johnson appeared before the said Lord Cardinall at Hampton-Court, where without any bill, the said Lord Cardinal committed him to the Fleet, where he remained by the space of twelue weeks, because he would not depart with the said portion. And at the last vpon a recognisance made that he should appeare before the said Lord Cardinall whensoeuer he was commanded, he was deliuered out of the Fleet; howbeit as yet the said portion is so kept from him that he dare not deale with it.

Injunction.

42. Also where one Martin Decowra had a lease of the Manor of Walsall in the County of Warwick for tearm of certain yeers, an Injunction came to him out of the Chancery by writ vpon paine of a thousand pounds, that he should auoid the possession of the same Manor, and suffer Sir George Throckmorton knight to take the profits of the same Manor to the time the matter depending in the Chancery between the Lord of S. Johns and the said Decowra were discussed. And yet the said Decowra never made answer in the Chancery, ne euer was called into the Chancery for that matter, and now of late he hath received a like Injunction vpon paine of two thousand pounds contrary to the course of the Common law,

Heresies and erroneous sects.

43. Also whereas in the Parliament Chamber, and in open Parliament communication and debates were had and moued, wherein mention was an incident made of matters touching heresies, and erroneous sects; It was spoken and reported by one Bishop there being present, and confirmed by a good number of the same Bishops, in presence of all the Lords Spirituall and Temporall then assembled, that two of the said Bishops were minded and desired to repaire vnto the Vniuersity of Cambridge for examination, reformation and correction of such errors as them seemed and were reported to reign amongst the Students and Scholars of the same, as well touching the Lutherane sect and opinions, as otherwise. The Lord Cardinall informed of the good minds and intents of the said two Bishops in that behalfe, expressly inhibited and commanded them in no wise so to doe. By meanes whereof, the same errors, as they affirmed, crept more abroad and took greater place; saying furthermore that it was not in their defaults, that the said heresies were not punished, but in the said Lord Cardinall, and that it was no reason any blame or lack should be arreted to them for his offence: whereby it euidently appeareth that the said Lord Cardinall beside all other his hainous offences, hath been the impeacher and disturber of due and direct correction of heresies, being highly to the danger and perill of the whole body, and good Christian people of this your Realm.

44. Finally, forasmuch as by the aforesaid Articles is euidently declared to

to your moſt royall Majeſty, That the Lord Cardinall by his outragious pride hath greatly ſhadowed a long ſeaſon your Graces honor, which is moſt highly to be regarded, and by his inſatiable avarice and ravenous appetite to have riches and treaſure without meaſure, hath ſo grievouſly oppreſſed your poore ſubjects with ſo manifold crafts of bribery and extortion, that the Common-wealth of this your Graces Realm is thereby greatly decayed and impoveriſhed. And alſo by his cruelty, iniquity, affection, and partiality, hath ſubverted the due courſe and order of your Graces lawes to the undoing of a great number of your loving people.

Pleaſe it your moſt royall Majeſty therefore of your excellent goodneſſe towards the Weal of this your Realm and ſubjects of the ſame, to ſet ſuch order and direction upon the ſaid Lord Cardinall, as may be to the terrible example of other to beware ſo to offend your Grace, and your lawes hereafter. And that he be ſo provided for, that he never have any power, juriſdiction or authority hereafter to trouble, vex, and impoveriſh the Common-wealth of this your Realm, as he hath done heretofore, to the great hurt and dammage of every man almoſt high and low, which for your Grace ſo doing, will daily pray, as their duty is, to Almighty God for the proſperous eſtate of your moſt royall Majeſty, long to endure in honor and good health, to the pleaſure of God, and your hearts moſt deſire. Subſcribed the firſt day of December the 21 yeare of the reign of our Soveraign Lord King Henry the 8.

T. More. T. Norffolk. Charl. Suff. Tho. Dorſet. H. Exon. John Oxinford. H. Northumberland. G. Shrewsbury. R. Fitzwater. T. Rocheford. T. Darcy. W. Mountjoy. William Sandys.

William Fitzwilliam. Henry Guldeford. * John FitzJames. * Anthony FitzHerbert.

So theſe Articles began to be ſubſcribed by Sir Thomas More Lord Chancelor, and ended with the two Judges of the law.

There be in this Court many Officers, Miniſters, and Clerks of the Court, the principall whereof is the [a] maſter of the Rols, anciently called Garden des Rolles, Clericus rotulorum, Cuſtos rotulorum. And this is an ancient office, and grantable either for life, or at will, at the pleaſure of the King. [b] The houſe annexed to his office, is called domus Converſorum, ſo called becauſe * King H. 3. founded this houſe to be a houſe of Jews as ſhould be converted to the true religion of Jeſus Chriſt, and there ſhould have maintenance and allowance, which continueth to this day. King E. 3. anno 15. of his reign, by Letters Patents annexed this houſe to the office of Cuſtos rotulorum, and this office is grantable by Letters Patents: for the more aſſurance whereof, and of divers things worthy of obſervation, we have thought good to ſet down an Act of Parliament concerning this matter in theſe words.

[c] King E. 3. by his Charter anno 51. of his reign did grant after the death of William Burſtall then Keeper of the Rols and of the ſame houſe of Converts of the Kings grant to the Keeper of the Rols for the time being, and annexed it to the ſaid office imperpetuum, and further granted that after the deceaſe of the ſaid William, the Chancelor or Keeper of the Great Seale after the voidance of the ſaid office of keeping of the Rols to inſtitute ſucceſſively the Keepers of the Rols, in dicta domo Converſorum, & cuſtodes illos ponend in poſſeſſione ejuſdem, &c. This Charter was confirmed by Act of Parliament, as by that which followeth appeareth.

[d] *A noſtre treſdoute H. le roy & ſon honorable counſeil en ceſt Parliament ſupplie ſon petit Clerke William de Burſtall Gardeiner des rolles de la Cancellarie, & Gardeiner de la Meaſon des Converſes de Londres quele eſt de voſtre honorable Patronage que come le dit William a ſes treſgraundes coſtages & reparille la Chappelle de les edifices du dit meaſon, & noſtre Seignior le roy dareine (que dieu aſſoil) pur maintenance de la dit Chappelle & meaſon a la prier du dit William granta pur luy & ſes heires per*

* Chief Juſtice of England.

* Sir Anth. Fitzh. a Juſtice of the Court of Common Pleas.

[a] He was not called Maſter of the Rols, untill 11 H. 7. ca. 20. but never ſo called in any Letters Patents of this office.

[b] Forteſc. ca. 24.

* See the Charter of erection by King H. 3. Hollingſh. 1281. Vid. Rot. Parl. 18 E. 1. nu. There were above fourſcore Converts in 18 E. 1. and petitioned in Parliament for more relief.

[c] Rot. Pat. 11 Ap. 51 E. 3. which you may read at large in Hollingſh. pa. 1281, 1282.

[d] Ex bundello petic. Parl. anno 1 R. 2.

Garden des rolles de la Chancery & de la meaſon des Converſes de Lõdres. Note the Maſter of the Rols or Keeper is Gardein of the houſe of Converts of the Patronage or gift of the King.

ſes Letters Patents que le dit Meaſon de Converſe apres le deceaſe du dit William demerera a tous jours as Gardein' de dits Rolles pur le temps eſteants tanque come ils ſeront en le dit office ſans certain form compriſe en Letters ſursdites, Pleaſe a noſtre dit' Seignior le roy & Seigniors deu Parliament confirmer ladit grant & les Letters Patents iſſint ent faitz, & les choſes compriſes en ycels en ouier de charitie. Whereunto full aſſent was given by Authority of Parliament.

Rot. Pat. 6 R. 2.

After which Act of Parliament John de Waltham Gartein or Keeper of the Rols obtained of R. 2. in the ſixth year of his reign Letters Patents, whereby the Kings granted to him & ſucceſſoribus ſuis Cuſtodibus Rotulorum the ſaid houſe of Converts; and the reaſon hereof ſeemeth to be, for that in the ſaid Charter of 51 E. 3. Sibi & ſucceſſoribus ſuis wanted. This John of Waltham was in 12 R. 2. Biſhop of Saliſbury, and after Treaſurer of England. Hereby it appeareth what eſtate the maſter of the Rols hath in domo Converſorum. And this houſe is the place where the Rols of the Chancery are kept, and are ſo called becauſe they are written in parchment, and made up in bundles of rols, that is to ſay, of Charters, Letters Patents, Commiſſions, Deeds inrolled, Recogniſances, &c.

Theſe Records ſince the beginning of H. 7. remain in the Rols, and all before were tranſmitted into the Tower, and there remain.

Alſo for further manifeſtation hereof, we have thought good to ſet down a Letters Patents of this office in the 25 year of H. 6. and rather for that it was granted Authoritate Parliamenti, in theſe words. Henricus Dei gratia Rex Angliæ, & Franciæ, & Dominus Hiberniæ, omnibus ad quos præſentes lr̃æ pervenerint. Sciatis quod cum nos tertio decimo die Novembris, anno regni noſtri decimo ſeptimo conſtituimus dilectum clericum noſtrum Johannem Stopenden Cuſtodem rotulorum & librorum Cancellariæ noſtræ cum omnibus ad officium illud ſpectantibus, percipiend' in eodem officio feoda, commoditates, & proficua conſueta, quamdiu nobis placuerit. Et ulterius dederimus, & conceſſerimus eidem Johanni cuſtodiã domus noſtræ Converſorũ præfato officio pro inhabitatione dicti Cuſtodis per progenitores noſtros quondam reges Angliæ ab antiquo depoſitæ, & annexæ: Habendum & tenendum cuſtodiam illam cum omnibus juribus & pertinentiis ſpectantibus ad eandem, prout in lr̃is noſtris patentibus inde confectis plenius continetur. Nos bonum & gratuitum ſervicium quod dilectus clericus noſter Thomas Kirkby nobis ante hæc tempora multipliciter impendit, indieſque impendere non deſiſtit merite contemplantes, ac de fidelitate, circumſpectione & induſtria ipſius Thomæ plenius confidentes, conſtituimus ipſum Thomam Cuſtodem rotulorum & librorum Cancellariæ noſtræ cum omnibus ad officium illud ſpectantibus, percipiendo in eodem officio feoda, commoditates, & proficua conſueta à tempore quo officium illud per Ceſſionem ſeu alio modo quocunque proximo vacare contigerit, quamdiu nobis placuerit. Et ulterius dedimus & conceſſimus, ac p̃ præſentes damus & concedimus eidem Thomæ, cuſtodiam dictæ domus nr̃æ Converſorum præfato officio pro inhabitatione ejuſdem cuſtodis per dictos progenitores nr̃os ab antiquo (ut præmittitur) diſpoſitæ & annexæ. Habend' & tenend' eidem Thomæ cuſtodiam illam cum omnibus juribus & pertinentiis ſpectantibus ad eandem quamdiu ipſum Thomam dictum officium Cuſtodis rotulorum & librorum prædictorum habere & tenere ſive occupare contigerit. Eo quod expreſſa mentio de vero valore annuo officii prædicti & cæterorum præmiſſorum ſeu alicujus eorum, aut de aliis donis ſeu conceſſionibus per nos præfato Thomæ ante hæc tempora factis in præſentibus facta non exiſtit, aut aliquibus Actibus ſive Ordinationibus in contrarium editis ſive ordinatis, aut aliqua alia cauſa, re, ſeu materia in aliquo non obſtantibus. In cujus rei teſtimonium has lr̃as nr̃as fieri fecimus patentes. Teſte me ipſo apud Maidſton viceſimo nono die Martii, Anno regni nr̃i viceſimo quinto. Authoritate Parliamenti.

Clericus noſter Cuſtos rotulorũ & librorũ Cancellar' noſtræ cũ omnibus ad officium illud ſpect'. Cuſtodia domus noſtræ Converſorum.

Cuſtos Rotulorum, &c.

Of latter times in the grant of this office he is ſtiled Clericus * parvæ bagæ, Cuſtos rotulorum, & domus Converſorum.

* Belonging anciently to his office.

The Maſter of the Rols hath *in jure officii*, the gift of the offices of Six Clerks in the Chancery.

See the ſtatute of 14 H.8.cap.8.

In the abſence of the Lord Chancelor he heareth cauſes and giveth orders.

See in the third part of the Inſtitutes, ca. Premunire.

CAP. IX.

The Court of Requeſts.

HAving ſpoken of the Court of Chancery, ſwayed and governed by the Lord Chancelour, or Keeper of the Great Seale: It ſhall be fit in this place to treat of the Juriſdiction of the Court of Requeſts, wherein the Lord Privy Seale at his pleaſure, and the Maſters of Requeſts doe aſſemble and ſit. And the originall inſtitution hereof was, that ſuch petitions as were exhibited to the King, and delivered to the Maſters of the Requeſts, ſhould be peruſed by them, and the party directed by them to take his remedy according to their caſe, either at the Common law or in the Court of Chancery. And thereupon they were called Magiſtri à libellis ſupplicum: and in this reſpect this meeting and conſultation was called the Court of Requeſts, as the Court of Audience and Faculties are called Courts, albeit they hold no plea of controverſie.

See hereafter the Courts of Audience and Faculties. pa.

Thoſe which in former times would have this Court to be a Court of judicature, took their aime from a Court in France, which is called Curia eorum quos Requeſtarum, *i.* ſupplicationum palatii magiſtros vocant, apud quos cauſa eorum tantum agitur, qui regis obſequiis deputati, vel privilegio donati ſunt: hujus curiæ Judices octo ſunt. But others taking this juriſdiction to be too narrow, contend to have it extend to all cauſes in equity equall with the Chancery, and their decrees to be abſolute and uncontrollable. But neither of theſe are warranted by law, as ſhall evidently appear.

Caſſaneus 7 part. fo.136.b.

In the reign of H. 8. the Maſters of Requeſts thought (as they intended) to ſtrengthen their juriſdiction by Commiſſion, to heare and determine cauſes in equity. But thoſe Commiſſions being not warranted by law (for no Court of Equity can be raiſed by Commiſſion) ſoon vaniſhed, for that it had neither Act of Parliament, nor preſcription time out of minde of man to eſtabliſh it.

See before cap. Chancery. Perots caſe, pag. 87. See the Articles againſt Cardinal Woolſy. pa. 89. See Hals Chronicle ubi ſupra, and Guines learned preface to his reading in the Inner Temple, about 16 El.

* Mich. 40 & 41 Eliz. In the Court of Common Pleas, upon a Will exhibited in the Court of Requeſts againſt Flood, for default of anſwer an Attachment was awarded againſt Flood under the Privie Seale, to Stepney then Sheriffe of Carnarven, who by force of the ſaid Writ attached Flood, and would not let him go, untill he had entred into an Obligation to the Sheriffe to appear before his Majeſties Councell in the Court of Requeſts: upon which Obligation the Sheriffe brought an Action of debt for default of appearance, and all this matter appeared in pleading. And it was adjudged upon ſolemne argument, that this which was called a Court of Requeſts, or the White Hall, was no Court that had power of judicature, but all the proceedings thereupon were Coram non Judice, and the arreſt of Flood was falſe impriſonment, ſo as he might avoid the bond by Dures at the Common law, without aide of the ſtatute of 23 H.6.ca.10.

* Tr. 40 El. in Cõmuni banco inter Stepney et Lloyd. Rot. 1157. See Hals Ch[illegible]n. 8 H. 8. fo. 59. agreeth with the law.

The puniſhment of Perjury in the Court of Whitehall by the ſtatutes of 33 H. 8. cap. 9. and 5 Eliz. cap. 9. doth not give it any juriſdiction of judicature, no more then the ſtatutes that give againſt a Gaoler an action for an eſcape, or puniſheth

puniſheth a Gaoler of his owne wrong for extortion, an officer of his own wrong ſhall be puniſhed by the ſtatutes in that caſe provided, and yet the ſtatutes thereby make them no lawfull officers; for it is one thing to puniſh, and another to give authority. So it was juſtice in the Parliaments to puniſh perjury in the Whitehall, although the Court were holden by uſurpation, and ſo before it appeareth to be by the judgement in Stepneys caſe. See Beverlyes caſe lib. 4. 123, 124. and the caſe of the Orphans of London, Lib. 5. fo. 73. where it is called the Court of Requeſts, taking the ſame to be according to the Originall inſtitution. And as gold or ſilver may as currant money paſſe even with the proper Artificer, though it hath too much allay, untill he hath tried it with the Touchſtone: even ſo this nominative Court may paſſe with the Learned as juſtifiable in reſpect of the outſide by vulgar allowance, untill he adviſedly looketh into the roots of it, and try it by the rule of law; as (to ſay the truth) I my ſelf did: But errores ad ſua principia referre, eſt refellere, To bring errors to their firſt, is to ſee their laſt.

* The Author of the book of diverſity of Courts written in 21 H. 8. doth not ſo much as mention any ſuch Court: nor the Doctor and Student who wrote in 23 H. 8. treating of matters of equity never mentioneth any ſuch Court: nor in any of the Reports of H. 8. or of any other before him, we find any mention made of any ſuch Court. Herein, as in all other things, we have dealt clearly and plainly, upon what authorities and reaſons we have grounded our opinion: and when we undertook to write, we reſolved to publiſh nothing reluctante conſcientia, which we (by Gods ſpeciall grace) have performed, without any ſpark of contradiction, or reſpect of any private whatſoever: That Charge ever ſounding in mine eare, that is given to all that take upon them to write, Ne quid falſum audeant, ne quid verum non audeant. And although the law be ſuch as we have ſet down; yet in reſpect of the continuance that it hath had by permiſſion, and of the number of decrees therein had, it were worthy of the wiſdome of a Parliament, both for the eſtabliſhment of things for the time paſt, and for ſome certaine proviſion with reaſonable limitations (if ſo it ſhall be thought convenient to that High Court) for the time to come: Et ſic liberavi animam meam.

Error, qui non reſiſtitur, approbatur.

Regula.

CAP.

CAP. X.

The Court of Common Pleas.

By the Statute of Magna Carta cap. 11. it is provided, Quòd communia placita non ſequantur curiam noſtram, ſed teneantur loco certo. Habet Rex etiam curiam, & Juſticiarios in banco reſidentes, qui cognoſcunt de omnibus placitis, de quibus authoritatem habent cognoſcendi, & ſine warranto juriſdictionem non habent nec coercionem. *Et paulo poſt*, Sunt etiam alii Juſticiarii* perpetui, certo loco reſidentes, ſicut in Banco, loquelas omnes de quibus habent warrantum terminantes, qui omnes juriſdictionem habere incipiunt præſtito ſacramento.

Mag. Carr. cap 11.

Bracton lib. 3. fo. 105. b.

* Ut ſup. fo. 108. a.

Oultre ceo voilons q̃ Juſtices demorgent continualment a Weſtm. ou ailors la, ou nous voudrons ordeiner, a pleader comunes pleas ſolonq; ceo que nous les manderons per nous breifes; iſſint que des parols deduces devant eux per nous breifes eyent record.

Britton fo. 2. Vide Flera lib. 2. cap. 2. & Lib. 1. cap. 34.

Out of theſe, three things are to be obſerved: Firſt what ſhall be ſaid communia placita. They are not called communia placita in reſpect of the perſons, but in reſpect of the quality of the Pleas. Regularly Pleas are divided into Pleas of the Crown, and into Common or Civill Pleas. Pleas of the Crowne are Treaſon and Felony, and miſpriſion of treaſon and felony, &c. This Court is the lock and the key of the Common law in Common Pleas, for herein are reall actions, whereupon fines and recoveries (the Common aſſurances of the Realm) do paſſe, and all other reall actions by Originall Writs are to be determined, and alſo of all Common pleas mixt or perſonall: in divers of which, as it appeareth before in the Chapter of the Kings Bench, this Court and the Kings Bench have a concurrent authority.

See the ſecond part of the Inſtitutes Mag. Carr. cap. 11. Vid. 17 E. 3. 50. *Quare incumbravit*, and in the Chapter of the Kin: s Bench here before.

* Rober Parning the Kings Serjeant at law 24 July 14 E. 3. was created Chief Juſtice of England, in which Office he remained untill the 15 of December following, and then he was made Lord Treaſurer of England; In which office he continued untill the 15 year of E. 3. when he was made Lord Chancelor of England: and while he was Lord Chancelor, he would come and ſit in this Court being the lock and key of the Common law, as is aforeſaid: and there debate matters in law of greateſt difficulty, as it appeareth in the report of the year of 17 E. 3. fo. 11. 14. 23. 37, &c. knowing aſſuredly, that he that knowes not the Common law, can never rightly judge of matters in equity: whereof at that time very few matters were depending before him in Chancery.

* Vide ſup. pa. 79.

2. Theſe words of Bracton, [ſine warranto juriſdictionem non habent,] are well expounded by Britton, that that Warrant is by the Kings Writs, Solonq; ceo que nous les manderons per nous breifes. So as regularly this Court cannot hold any common plea in any action, reall, perſonall, or mixt, but by Writ out of the Chancery, and retornable into this Court.

3. That in certaine caſes this Court may hold plea by Bill without any Writ in the Chancery, as for or againſt any Officer, Miniſter, or priviledged perſon of this Court.

Alſo this Court without any Writ may upon a ſuggeſtion grant prohibitions to keep as well Temporall as Eccleſiaſticall Courts, within their bounds and juriſdiction, without any originall or plea depending: for the Common law which in thoſe caſes is a prohibition of it ſelfe ſtands in ſtead of an Originall, whereof there be infinite precedents in this Court. And Sir Thomas Egerton

8 R. 2. Attachment ſur prohib. pl. ultimo. 9 H. 6. 61. 10 E. 2. action ſur leſtat. 34.

Lord

Lord Chancelor Mich. 7. Jac. Regis called Fleming Chiefe Justice and all the Judges of the Kings Bench, and Tanfeild Chief Baron, and the reſt of the Barons of the Exchequer, of whom the Chancelor demanded whether the Court of Common Pleas had authority to grant any prohibition without Writ of Attachment or plea depending: who upon mature deliberation unanimouſly reſolved, that this Court might grant prohibitions upon ſuggeſtions without any Writ of Attachment or plea depending, for the reaſon aforeſaid, and according to a multitude of preſidents. The Juſtice of the Common Pleas were not called, becauſe they had often reſolved the point before. So as now this point concerning the jurisdiction of this Court for granting of prohibitions upon ſuggeſtions, where there is neither Writ of attachment, nor plea depending, is in peace, being reſolved by the Juſtices of the Bench and of the Common Pleas, and by the Barons of the Exchequer.

See the ſecond part of the Inſtitutes all theſe points.

4. This Court upon an adjournment upon a forein voucher may hold plea likewiſe upon other forein pleas, and upon generall baſtardy, Ne unques accouple in loiall matrimony &c. for none but the Kings Courts, and no inferiour Court ſhall write to the Biſhop. So likewiſe upon ancient demeſne pleaded, &c.

The Chiefe Juſtice of the Common Pleas is created by Letters Patents. Rex, &c. Sciatis quod conſtituimus dilectum & fidelem E. C. militem, capitalem Juſticiarium * de Communi banco. Habendũ quamdiu nobis placuerit, cum vadiis & feodis ab antiquo debitis & conſuetis. In cujus rei teſtimonium has literas noſtras fieri fecimus patentes. Teſte, &c.

* So called the Common Bench in reſpect of the Common pleas there holden.

And each of the Juſtices of this Court hath Letters Patents. Sciatis quod conſtituimus delectum & fidelem P. W. militem unum Juſticiariorum noſtrorum de Communi banco, &c. But none can be conſtituted Judge of this Court unleſſe he be Serjeant at Law of the degree of the Coife, and yet in the Letters patents to them made, they are not named Serjeants.

The Juriſdiction of this Court is generall, and extendeth throughout all England.

See the ſecond part of the Inſtitutes, Mag. Cart. cap. 11. 6 E. 3. 12. 39 E. 3. 24. 18 E. 3. ſtat. 3.

For the antiquity of this Court ſee before in the Chapter of the Kings Bench adjoyning thereunto, 6 E. 3. where a fine was levied in this Court 6 R. 1. and in 39 E. 3. a plea in this Court in 1 H. 3. And that I may ſpeake once for all the Juſtices of the Kings Bench, or of this Court of the Common Bench, that they obſerve the ancient rule of law, Nemo duobus utatur officiis, for none of them can take any other office, or any fee, or reward but of the King only. And it were behoovefull to the Common wealth and advancement of Juſtice and right, and preferment of well deſerving men, if the like courſe were holden concerning all offices, as well Eccleſiaſticall as Temporall and Civill: and that no man following the example of the reverend Judges ſhould enjoy two offices. For ſeverall offices were never inſtituted to be uſed by one man.

Term. Trin. Anno 19 E. 1. in communi banco, Ro. 146 Rotel. in Theſaur.

The jurisdiction of this Court for puniſhment of their Officers & Miniſters. *Petrus de Luffenham indictatus quod ipſe in Curia hic à die Sancti Hillarii in 15 dies Anno regni regis nunc 19, falſo & malicioſe delevit adjornationem ejuſdem eſſoin' ad diem illum intrati de com' Rotel. pro Roberto Attehale de South-Luffenham petente & Radulph. de Kirkeby tenent' de placito terre, &c. Et queſitus qualiter ſe velit inde acquietare, dicit quod in nullo eſt inde culpabilis, & de hoc ponit ſe ſuper juram' de ſociis in Cur' hic. Et qui jurati dicunt ſuper Sacramentum ſuum, quod prædictus Radulphus prædictis die & anno fuit in Cur' hic, & dixit prædicto Petro quod prædictum eſſoinum fuit adjornat', & prædictus Petrus intravit infra Bancum & rotulos de eſſon', & cum perpendiſſet quod le aff. fuit appoſitum molivit ipſe policem ſuum & inde frotavit ſuper le aff. quouſq; illud fere omnino delevit ut ſic faceret prædictum Robertum amiſiſſe breve ſuum, &c. Ideo conſideratum eſt quod prædictus Petrus committitur Gaole de Fleete cuſtodiend' per unum annum & unum diem pro falſitate & deceptione prædictis, & tunc redimendus*

pro

pro voluntate domini regis, &c. Et ſciend' quod liberatus fuit Gaolæ die Mercurii prox' ante feſtum Sanctæ Margaretæ virginis hoc anno, &c. Poſtea die Veneris prox' ante feſtum Sanctæ Margaretæ virginis Anno 20 deliberatus eſt prædictus Petrus, & inhibitum eſt ei, quod nihil habet niſi veſtes pendentes in dorſo, admittitur ad dimid' Marc. per 20 li. Wil. de Okeham, Ita tamen quod ſi ad plus ſufficiat, &c. Juſtic' reſervant eis poteſtatem, &c.

*Et quia prædictus Johannes de Vpton in Cur' hic recognovit quod hoc anno in æſtate conceſſit quod prædictam defaltam remitteret, & pro illa conceſſione recepit 20 s. in Autumpno, et poſtea ad prædictam tertiam ſeptimanam Sancti Michaelis idem Johannes remiſit prædictam defaltam, per quam prædictus Willielmus recuperaſſe potuit prædictum ten' in fraudem & deceptionem prædicti Willielmi; Ideo ipſe pro falſitate prædicta committitur Gaolæ de Fleet commoraturus per annum & diem, &c. per formam * ſtatuti, &c. Poſtea poſt annum et diem, &c. prædictus Johannes venit & deliberatus eſt ſecundum ſtatutum, &c. et inhibitum eſt ei, &c. et finivit prouna marca.*

Mich. 19 E. 1. in Banco Rot. 191. Northampton.

W. 1. cap. 29.

Bene examinatur fraus de Brevi in Jur' per Vic' retorn' Termin' Trin' & per quendam alium panellum ejuſdem mutatum & contrefactam, unde contrefactor per Jur' eſt culpabilis, et adjudicatur Gaolæ de Fleete per annum et diem. Et quia ſcriptor ejuſdem brevis licet de falſitate & malitia non fuit particeps, nec aliquid mali feciſſe putavit, &c. Cuſtodiatur, &c. & finem fecit per unam marcam.

Eodem Rot nu. 210. London.

Et quia Rogerus de Langeport Attornatus eſt malæ famæ, & defatigavit Cur': Ideo committitur Gaolæ, &c. Et quæſitis rotulis de Indictamentis Attornatorum, &c. compertum eſt quod idem Rogerus indictatus fuit, quod ipſe fuit converſus in cancell' & ſocius Adæ de Ponte fracto, qui falſavit ſigillum Domini Regis, & falſa brevia compoſuit, &c. Et quæſitus qualiter ſe velit acquietare, dicit quod Clericus eſt, & non poteſt in Curia hic Domino Regi inde reſpondere. Et quia nullus ordinarius ipſum petit, &c. nec ipſe Rogerus aliter ſe velit inde acquietare, Ideo ipſe committitur Gaolæ quouſque, &c. Et mittitur ad Turrim London, &c.

Hil. 20 E. 1. in Banco Rot. 109. Northampton.

The Officers of this Court are many, *viz.* Cuſtos Brevium, tres Prothonotarii, **three Prothonotaries**: Clericus Warrantorum, **Clerk of the Warrants**: Clericus Argenti Regis, **Clerke of the Kings ſilver**: quatuor Exigendarii, **Exigenters**: quatuordecem Falazarii, **Filazers**: Clericus Juratorum, **Clerke of the Juries**: Clericus Eſſoniorum, **Clerke of the Eſſoignes**: Clericus Utlagariorum, **Clerke of the Outlawries**: **this belongs to the Office of the Attorney Generall, who ereciſeth it by Deputy.**

In former times great abuſes have been by Attornies of this Court, by ſuing out a judiciall Proceſſe without any Originall; which when it hath been found out, it hath beene ſeverely puniſhed; for many inconveniences thereupon doe follow. For example, in 20 H. 6. an Attorney of the Common pleas had made a Capias directed to the Sheriffe of Yorke, whereof there was no Originall; at which day of the retorne an Attachment was awarded by the Court againſt the Attorney to anſwer the deceipt, whereupon he was taken and examined, and confeſſed it, and thereupon by the Court he was committed to the Fleet, impriſoned for a moneth, and that his name ſhould be drawn out of the Roll of Attornies, and never ſhould be Attorney either in this Court or any other, and thereunto he was ſworne. Note the ſeverity of this judgement doth ſhew the hainouſneſſe of the offence.

20 H. 6. 37. a. W. 1. cap. 29.

17 E. 3. 51, 52. Nota, he may be punished for the crime, & the party grieved may have his action.

An Attorney sued out an Habere facias seisinam against one, by force whereof the true tenant was put out of his freehold, where in truth there was no Record of any recovery: the party grieved brought an action of deceit against the Attorney, and recovered damages, and the Attorney imprisoned.

Pasch. 20 E. 1. in Banco, Rot. post 135.

Memorandum quod Magister Johannes Lovell qui fuit Custos Rotulorum & Brevium Domini Regis de Banco per manus suas proprias liberavit Johanni Bacon Clerico de mandato Domini Regis in hac verba. Edwardus, &c. Dilecto Clerico suo Johanni Lovell Salutem. Cum commiserimus dilecto Clerico nostro Johanni Bacon custod' Rotulorum & Brevium nostrorum de Banco; Habendum quam diu nobis placuerit: Vobis mandamus quod eidem Johanni Rotulos & Brevia predicta quæ sunt in custodia vestra ex commissione nostra per Chirographum inde inter vos & ipsum conficiend' sine dilatione liberetis custod' in forma predicta. T. me ipso apud Stebenheth 17 Aprilis Anno Regni nostri 20.

Super quo prædictus Johannes liberavit dicto Johanni Bacon Rotulos & Brevia de Termino Sancti Michaelis Anno 17, usque hunc Terminum, & similiter Rotulos de Esson'. Et scripta dedicta & suspecta cum talleis dedict', una cum compotis dedict'. Ac etiam 160 not' finium, duas ligulas de recordis sine die, & 14 Certificat' Episcoporum.

CAP.

CAP. XI.

The Court of Exchequer.

The Authority of this Court is of originall jurisdiction without any Commission. Of this Court Britton **speaking in the Kings person saith.** [a] Volons nous que a nous Eſchekers a Weſtm' & ailors eyent nous [b] Treaſorers, & nous [c] Barons illonques Juriſdiction & record de choſes que touchent lour office a oier & determiner touts les cauſes que touchent nous debts, & auxi a nous fees, & les incident choſes, ſans les queux tiels choſes ne purront eſtre tries, & que ilz eyent power a conuſter de detts que lon doit a nous dettors per ou nous puiſſons pluis toft approcher a noſtre dett.

[a] Brittton fo. 2. b.
[b] Nota, Treaſurers in the plurall number.
[c] Of ancient time they were Barons and Peers of the Realm, lib. nigro. Scaccar[o] parte 1. ca. 4. See the 14 chap. of Mag. Cart. and the expoſition of the ſame.

[d] En droit des purpreſtures voilons nous que le noiſances ſoient ouſtes aux coſtages des purpreſtours, & les ſufferables ſoient priſe in noſtre maine a la value per an ſoit inrolle, & ſolonque le diſcretion des Treaſorers & des Barons de nous Eſchequers ſoient arenees a fee farma a eux que pluis voilent doner.

[d] Et fo. 29. b.

[e] Et ſoit auxi enquis de nos cuſtomes de quirs & de leynes que les ount coilles, & combien les coillours ount bien ſuffert de paſſer de ſackes de leyne ſauns payer cuſtome, & combien eit valu la cuſtome cheſcun au en cheſcun mannere de cuſtome a nous appurtenant & ceux articles ſoient termines a noſtre Eſcheker ſelonc la diſcretion de nos Barons.

[e] Et fo. 38. b.

See the Cuſtumer of Normandy, cap. 5. & 6. **touching the Exchequer there, both of another Juriſdiction, and of other Judges, and Officers, then our Court of Exchequer is.**

Leſcheker eſt un place quarre que ſolement eſt ordeine pur le prou le roy ou deux Chivaliers. 2. Clerks, ou 2 homes, lres ſont aſſignes pur Oier & Terminer les torts faits al roy & a ſa corone en droit de ces fies & ces franchiſes, & les accounts des Bailiffs, & des receivors de deniers le roy & des adminiſtrators de ces biens per la viewe de une Soveraign queſt *Treaſorer de Angliterre.* Les dieux Chivaliers ſoloient eſtre appeles deux Barons pur afferer les amerciaments de counties, & des Barons & des tenants counties & baronies cy que nul ne ſuit aſſere forſque per ces Piers.

Mirror ca. 1. §. 14. *De la pace del Eſchequer.*

A celle place eſtoit aſſigne un Seale ove garden pur fair ent acquitance de cheſcun payment que avoir le voloit, & de ſealer les bres & les eſtrets ſouth cere verte iſſant de celle place pur le prou le roy. En celle place ſont auxi Chamberleines & pluſors auters miniſters que ne touch my molt a la ley.

Ordeine fuit Leſchequer in manner come enſuiſt, & les paines pecuniels de Countees & Barons en certein, & auxi de tenants, Counties & * Baronies diſmemlies & que ceux amerciament fuiſſent affered per les Barons del Eſchequer, & que lein envoiaſt les eſtreets de lour amerciaments al Exchequer ou que ilz fuiſſent amercies en la Court le roy.

Et ca. 1. §. 3.
* This was in reſpect of the tenure, for all Earldomes and Baronies were holden in Capite. 20 E. 3. aſſ. 120. 26 aſſ. 37.

[f] Ouſter ceo nul Common plea ne ſoit deformes tenus en Leſchequer encounter la form de la grand Charter.

[f] Artic. ſup. Cart. cap. 4. 28 E. 1. Stat. de Roreland. 10 E. 1. Reg. 187.

[g] Fleta (**for** Bracton **treateth not of this Court**) **ſaith.** Habet & Rex Curiam ſuam & Juſticiarios ſuos reſidentes ad Scaccarium. **And this is all I finde in him.**

[g] Fleta li. 2. ca. 1.

This Court is divided into two parts, viz. **judiciall Accounts called** Scaccarium computorum, **and into the receipt of the Exchequer.** [h] Una origo utriuſque Scaccarii, ſuperioris ſcilicet, & inferioris, ſed quicquid in ſuperiori computatur, in inferiori ſolvitur.

[h] Ocham.

Before we obſerve any thing out of theſe ancient Authours and Acts of Parliament, it ſhall be neceſſary to ſet down the great Officers, the Judges, and

other Officers and Miniſters of this Court, as they be at this day.

Fiſcus in one ſenſe is taken for the Exchequer, properly it is Sporta a Pamper, wherein the confiſcations, ſeſſements, and other moneys of the King were carried into the Treaſury.

¶ *The Officers of this Court.* Rot. Par. 13 R. 2. nu. 6 & 7.

1. Dominus Theſaurarius Angliæ: which office he hath at this day by the delivery of a white ſtaffe, at the Kings will and pleaſure. In former times he had this great office by delivery of the keys (golden keys) of the treaſury: when treaſure failed, the white ſtaffe ſerved to reſt him upon it, or to drive away importunate ſuiters.

Vide Rot. Par. 13 E. 3. part. 1. for this office.

2. Theſaurarius Scaccarii, anciently called Arcarius ab arca, and this office he hath by Letters Patents. For both theſe offices he hath 365. l. fees, robes out of the Wardrobe 15. l. 7. s. 8. d. In toto 380. l. 7. s. 8. d. * Hugo Pateſhul was firſt Treaſurer of the Exchequer, and after Summus Theſaurarius.

* Math. Paris 18 H. 3. pa. 391. & 19 H. 3. anno Dom. 1234. And ſo was Tho. Wimondham. ann. Dom. 1258. 50 H. 3.

Cancellarius Scaccarii, that keepeth the Seal. See Pl. Com. 321. Leſchequer ad Chancelor & Seale, & les Brēs uſuall in le Chancery in Leſchequer, &c. ſont pluis ancient que le Regiſter. See of the Chancelour of the Exchequer hereafter in the Court of the Exchequer Chamber.

Capitalis Baro & Barones alii.

Subtheſaurarius Scaccarii, anciently called Locum tenens Theſaurarii. Petrus de Willebye locum tenens Theſaurarii, Anno 30 E. 1. et plures alii: He nameth the two aſſayers of all the goods ſeiſed or not cuſtomed, and ordereth whether the party ſhall have them at the price or not, he appointed the Steward, Cook and Butler for the proviſion of the Star chamber: he in the vacancy of the Treaſurer doth all things in the Receipt, that the Treaſurer doth. In the ſtatute of 39 El. cap. 7. and 43 El. in the Subſidy of the Clergy he is called Under-treaſurer of England. Concerning this matter I finde of record this writ following.

Rot. revium. 20 E. 2.

Edwardus Rex Angliæ & dominus Hiberniæ Baronibus & Camerariis ſuis de Scaccario ſuo, Salutem. Quum pro eo quod [a] venerabilis pater W. Archiepiſcopus Eborum nuper Theſaurarius Scaccarii prædicti, circa diverſa negotia in partibus borealibus eſt occupatus, quo minus intendere poſſit ad ea quæ ad officium illud in [b] dicto Scaccario pertinent exercenda, conſtituerimus venerabilem patrem Johannem Wintonienſem Epiſcopum [c] tenentem locum Theſaurarii Scaccarii prædicti, quouſque de officio illo aliter duximus ordinandum, percipiendo in eodem officio (dum illud ſic tenuerit) feodum conſuetum, [d] prout in literis noſtris patentibus præfato Epiſcopo inde confectis plenius continetur. Vobis mandamus quod ipſum Epiſcopum ad officium admittatis & ei in his quæ ad officium prædictum pertineant intendatis in forma prædicta. Teſte Edwardo filio noſtro primogenito Cuſtode regni noſtri, apud Hereford Sexto die Novembris, Anno regni noſtri viceſimo.

[a] Archbiſhop Treaſurer of the Exchequer.
[b] Nota in dicto Scaccario.
[c] Under-treaſurer.
[d] Treaſurerſhip of the Exchequer granted by Letters Patents.

Cuſtos regni.

The office and duty of the Lord Treaſurer of England doth appear by his oath, which ſtandeth upon eight Articles.

Vid. The Lord Chancelors oath in the Chapter of the Chancery.

1. That well and truly he ſhall ſerve the King and his people in the office of Treaſurer.

2. That he ſhall doe right to all manner of people, poor and rich, of ſuch things as concern his office.

3. The Kings treaſure he ſhall truly keep and diſpend.

4. He ſhall truly counſell the King.

5. The Kings Councell he ſhall * lapn and keep.

* Lain is an old French word, to hide.

6. That he ſhall neither know nor ſuffer the Kings hurt, nor his diſheriting, nor that the rights of the Crown be decreaſed by any mean, as far forth as he may let it.

7. And if he may not let it, he ſhall make knowledge thereof clearly and expreſſy to the King with his true device and counſell.

8. And he ſhall doe and purchaſe the Kings profit in all that he may reaſonably doe: which in effect agreeth with the oath of the Lord Chancelour, as you may read ubi ſupra.

Imprimis

Imprimis poſt ſigillationem patentium de illo officio vocetur in cur' Cancellariæ, coram domino Cancellario genibus flexis facit ſacramentum, ut ſuperius ſcribitur, & deinde ſigillatum erit breve regis directum Baronibus & Camerariis de Scaccario de attendenc' recitans effectum dictarum literarum patentium. Et inde receſſerit dictus dominus Cancellarius ad Curiam Scaccarii & ibidem (dicto Theſaurario ſtante) ad barram legantur literæ Patentes prædict' & ſimiliter prædictum bre, & vocatus eſt idem Theſaurarius ad locum ſuum per dictum dominum Cancellarium accipiens ceſſum, & liberatæ erunt tunc & ibidem claves officii Theſaurarii, & omnes officiarii ſub ſe recedent cum ipſo Theſaurario in Theſaurum & dantes ei attendenc'. This we have tranſcribed de verbo in verbum in eiſdem verbis.

Forma conſtitutionis Theſaurarii Angliæ.

The Lord Treaſurer of England hath alſo granted to him by Letters Patents under the Great Seal, Theſaurariam Scaccarii regis Angliæ, which of ancient time was a diſtinct office by it ſelf. The office of the Treaſurer of the Exchequer did principally take care of the green wax, fees, and tenures, as it is ſaid; he hath alſo with the Barons the cuſtody of records, as by the inſuing record appears.

Vid. Rot. Carta-rum an. 17 H. 3.

In an Information of intruſion in the Exchequer againſt Brace, judgement was given for the Queen again Brace, who brought a writ of Error directed to the Lord Chancelor and Lord Treaſurer, & they made a warrant under their ſeals to the Barons to bring the record before them. And Manwood Chief Baron objected againſt both the writ and the warrant, for that the ſtatute of 31 E. 3. c. 12. that giveth this writ of Error is generall, that the Lord Chancelour and Lord Treaſurer ſhall cauſe to come before them the record and proceſſe of the Exchequer, and in as much as no ſpeciall writ was given by the ſtatute, therefore the writ ought to be directed to them that have the keeping of the record according to the courſe of the Common law. * And for that the Treaſurer of the Exchequer and Barons have the keeping of the Records of the Exchequer, the writ of Error ought to have been directed to them, and that the Lord Chancelor and Lord Treaſurer of England are Judges in this caſe, and not the Treaſurer of the Exchequer. And upon ſearch of preſidents all the writs of Error from the making of the ſtatute untill 7 El. were directed to the Treaſurer of the Exchequer, and Barons to bring the Record before the Lord Chancelour and Lord Treaſurer: but in 7 El. and ſince divers writs have been directed as this writ was, &c. But it was reſolved by the Lord Chancelor, Lord Treaſurer, and the two Chief Juſtices Aſſiſtants, that the writ ought to be directed to the Treaſurer of the Exchequer and Barons that have the Record in their cuſtody according to the ancient courſe and preſidents, and thereupon this writ abated.

Hil. 25 El. Coram Baronibus.

Note the ſtatute ſpeaketh of the Chancelor and Treaſurer generally which is intended of the Treaſurer of England, *in dignitatis ſeaſu*. See lib. 1. fo. 11. Sir William Pelhams caſe.

* Note hereby it clearly appeareth that the Treaſurer and Barons of the Exchequer are keepers of the records judiciall of the Exchequer. Vide 9 E. 3.

Here Four things are to be obſerved. 1. That albeit the Barons, as hath been ſaid, are the ſole Judges, yet the Treaſurer of the Exchequer is joyned with them in keeping of the Records, whereof the Barons are Judges, for they are parcell of the Kings Treaſure. 2. That writs of Error are to be directed to them that have the cuſtody of the Record wherein any judgment is given; as a writ of Error to reverſe a judgment in the Court of Common Pleas, ſhall be directed to the Chief Juſtice onely who hath the cuſtody of the body of the Record wherein the judgment is given, but the originall writ and warrant of Attorny are not in his cuſtody. 3. That albeit the Lord Treaſurer is alſo Treaſurer of the Exchequer, yet the writ of Error is directed to him as Treaſurer of the Exchequer, and the Barons, to have the Record before himſelfe as Treaſurer of England & the Chancelor. 4. That at the making of the ſtatute of 31 E. 3. that giveth the writ of Error, the offices of Treaſurer of England and the Treaſurer of the Exchequer were in ſeverall hands, as by the writs of Error brought ſoon after appeareth. Before the ſaid ſtatute of 31 E. 3. the Errors in the Exchequer were ſometimes examined in Parliament, and ſometimes before Commiſſioners by force of the Kings writ under the Great Seal.

Par. 18 E. 3. n. 40. &c. Vid. 1 R. 2. nu. Sir William de la Pools caſe. Mich. 33 & 34 E. 1 Coram Rogero de Hegham & aliis Juſticiariis, &c.

It was petitioned in Parliament in 22 E. 3. nu. 15. that erroneous judgments in

in the Exchequer might be reversed in the Kings Bench, but it succeeded not.

Vide Term. Pasch. 14 E. 3. a Writ directed to the Treasurer and Barons calling to them such Justices as they should think fit, to examine the Record, &c. of the judgement in the Exchequer, &c. for the Countesse of Kent against the Abbot of Ramsey, upon which judgement the Abbot brought his Writ of Error. Fitzherbert for another purpose abridgeth the case, Tit. Scire fac. 122.

Hil. 11 E. 3. in libro rubeo in Scaccario fo. 322. the case of John de Leceſtre Chamberlaine of the Exchequer, a notable president to the like effect, Lege, quia optime.

Nota in the Act of 31 E. 3. that is called the Councell Chamber, which now is called the Exchequer Chamber: because there was the assembly of all the Judges being the Kings Councell for deciding of matters in law.

1 part of the Institutes, cap. Grand Serjanty, Sect. 153.

¶ The Chamberlaines of the Exchequer. For these officers see in the first part of the Inst. lib. 2. cap. Grand Serjeanty. Sect. 153. the office mentioned in the Letters patents is, Officiū unius Camerariorū de Recept Scaccarii, sive officiū unius Camerariorum de Scaccario, and is granted for term of life to be exercised by him or his Deputy. To this Office belongs the office of one of the Doorekeepers of the Receipt.

¶ Contrarotulator. Of so great regard is the right use of the Pipe, as there is a Controller thereof, which no other Office in this Court hath. And the Chancelour of the Exchequer is the Controller of the Pipe.

¶ Rememoratores 3. *viz.* Regis, Thesaurarii, & Primorum fructuum.

¶ Clericus Pipe. Of this Officer somewhat is necessary to be said. The originall institution of this Court was taken from a Conduit or conveyance of water into a Cisterne: for as water is conveyed from many Fountains and Springs by a Pipe into a Cisterne of a house, and from thence into the severall offices of the same: so this golden and silver streame is drawne from severall Courts as fountains of justice, and other springs of revenue reduced and collected into one Pipe, and by that conveyed into the Cisterne of his Majesties Receipt, &c. Therefore all accounts and debts to the King are delivered and collected out of the offices of the Kings Remembrancer, and Treasurers Remembrancer, &c. and drawn down and put in charge in the Pipe. So as whatsoever is in charge in this Roll or Pipe, is said in law to be duly in charge. The Clerk of the Pipe in the Patent of his office, is called Ingrossator magni Rot. in Scaccario.

See the stat. of 5 R. 2. c. 14. stat. 1. 26 Ass. p. 60.

Duly in charge.

The Annuell or great Roll.

Also the Treasurers Remembrancer is by his office to charge and enter from the Originall into the Annuall, otherwise called the Great Roll, all fee-farme rents and other rents whatsoever upon leases of lands within the survey of this Court: and whatsoever is in charge in this Roll is said to be duly in charge.

Duly in charge. The Roll of revenues.

Also he ought to keep another Roll, commonly called a Roll of reversions, as of grants of lands and offices in taile, for life or years absque compoto, aut aliquid inde reddendo, to the end, as often as need shall require, Writs may be granted to enquire whether the issue be spent, the lessee dead, &c.

5 Auditors. 1 H. 7. 4. a. 7 El. Dier 238. b. Sir Rich. Lees case.

¶ There be five Auditors of the Kings revenues within the survey of this Court, and their office is to take the accounts of the Kings Receivers, Sheriffs, Escheators, Collectors, and Customers, and to audite and perfect them. But an Auditor cannot allow any license or grant, for the Auditor knoweth not whether the license or grant be good or no: but upon petition it ought to be allowed by the Barons who know the Law, & sic de similibus. Neither can the Auditor put any thing in charge, for his office is (as hath been said) but to take and audite accounts: for the words of the Patent be, Concessimus B. officium unius Auditorum Scaccarii nostri quod I. S. nuper habuit & occupavit: Habendum & tenendum prædictum officium præfato B. quam diu se bene gesserit in eodem per se vel sufficientē deputē suum. Nay, though the Barons do order upon sight of any Record or evidence, that any thing shall be put in charge, this is used to be done to bring it in question, but it is not in law accounted to be duly in charge (untill it be recovered, received, and accounted for of Record; for it is not judicially done,

Q. amdiu se bene gesserit.

done, becauſe it may be done in the abſence of the party. Neither can any Auditor make a Super, but of that that hath been received and accounted for before.

¶ Auditor of the Preſts, take and audite the accounts of Ireland, Barwick, the Mint, and of any money impreſted to any man.

¶ Auditor of the Receipts. First, he is a kind of Filazer, for he fileth the Tellers Bills and entreth them. Secondly, he is a Remembrancer, for he giveth to the Lord Treaſurer a Certificate of the money received the week before. Thirdly, he is an Auditor, for he maketh Debentures to every Teller before they pay any money, and taketh and auditeth their Accounts. Beſides all theſe he keepeth the Black book of receipts & the Lord Treaſurers key of the Treaſury, and ſeeth every Tellers money locked up in the new Treaſury.

¶ Forinſec' Oppoſitor, the Forein Oppoſer, he doth oppoſe all Sheriffes and Bailiffs of Liberties of their green wax: Under theſe words [Green wax] are included Fines, Iſſues, and Amerciaments, Recognizances for the peace, Recognizances for appearance in any other Court, and good behaviour, and ſuch like incertainties certified in ſeverall Streats into the office of the Lord Treaſurers Remembrancer, who delivereth the ſame to the Clerk of the Extreats to be put into Proces. And becauſe the Extreats annexed to the Writ are under a Seale in green wax, they are vulgarly called Greenwax. But Felons goods, Waiſes, Strayes, Outlawes goods, Deodands, and ſuch like, are within the Sheriffes accounts, with which the Eſcheator was wont to deale. Green wax. 42 E.3.cap.9. 7 H.4.cap.3.

¶ Clericus Extractorum, Clerk of the Extreats, his office is partly touched before.

Here it may be demanded what the meaning of theſe words (of Eſtreats that ſowne not) is. The Act of 4 H.5. cap. 2. being originall in French, is in proprio idiomate, *Des Eſtreats nient ſovvenn*, which by turning the two ſingle v v into a w was firſt made ſowenn, and afterwards ſowne. Now ſovvenn properly ſignifieth to be remembred, and ſuch caſualties as are not to be remembred run not in demand, that is, are not leviable. 4 H.5.cap.2.

¶ Clericus Nihilorum maketh a Roll of all ſuch ſummes as the Sheriffe upon Proces for the Greenwax returne Nihil, and delivereth that Roll into the office of the Lord Treaſurers Remembrancer to have execution done of it for the King. See the Statute of 5 R. 2. cap.13.ſtat.1.concerning theſe returns of Nihil and the diſcharge thereof. See the ſtat. of Rotel. verſ.finem.

¶ Clericus Placitorum, Clerk of the Pleas. In this mans office all the officers and privileged perſons in this Court are to ſue and be ſued. Of this matter more hereafter.

¶ Mareſchallus, Marſhall. To this officer the Court committeth the keeping of the Kings debtors during the ſitting of the Term, to the end they may provide to pay the Kings debts, or elſe to be further impriſoned. Such Offices as are found Virtute officii, and brought into the Exchequer, are delivered to him, to be delivered over to the Lord Treaſurers Remembrancer. He alſo appointeth Auditors to Sheriffs, Eſchetors, Cuſtomers, and Collectors for taking their accounts. Stat.de 51 H 3. ſtatut.5.

¶ Clericus Summonitionum, Clerk of the Summons.

¶ Deputati Camerarii duo, called Under-chamberlains of the Exchequer: they cleave the Tallies written by the Clerk of the Tallies, and reade the ſame, that the Clerk of the Pell and the Controllers thereof may ſee their entries be true: they alſo ſearch for all Records in the Treaſury.

¶ Secundarii Rememoratoris regis duo.

¶ Secundarii Rememoratoris Theſaurarii duo.

¶ Secundarii Pipæ duo.

In the other part of the Exchequer which is called the Receipt. Concerning the courſe of the Receipt of the Exchequer, ſee Rot. Clauſ. 39 E. 3. m.26. Rot.clauſ. 39 E.3. memb.26.

¶ The two Chamberlaines. Of the duty of theſe Officers ſee in the firſt part of the Inſtitutes. Vide 51 H.3.ſtat.5. 14 E.3 cap.14. Firſt part of the Inſtit.Sect.153.

¶ Clericus Talliarum. There be two kind of Taxes or Tallies, the one is called

called a Tally of [a] debt, and the other is called a Tally of [b] reward; of both which you may read in divers Acts of Parliament.

[a] 1 R.2.cap.5.
[b] 27 H.8.cap.11. 31 H.8.cap.16. 2 E.6.cap.4.

¶ Clericus Pellis, Clerk of the Pels. His duty is to enter every Tellers bill into a Roll, called Pellis receptorum. His duty also is to enter in another Roll payments called Pellis exitus; and by what warrant the payment was made.

¶ Numeratores, 4 Tellers. The office of a Teller consisteth in four duties. 1. To receive monies due to the King. 2. To give to the Clerk Pellis receptorũ a bill thereof, whereby he may be charged. 3. To pay to all persons monies by Warrant of the Auditor of the Receipt. 4. They make yearly and weekly books of their receipts and payments, which they deliver to the Lord Treasurer.

¶ Junctores talliorum duo.
¶ Deputati Camerarii duo.
¶ Custos Thesauriæ.
¶ Tabellarii Ordinarii 4.
¶ Scribæ duo.
¶ Officiarii Decimarum & Primitiarum.

Parl. 5 R.2.ca.16. stat.1. By the statute of 5 R.2. for making a Commission in the Exchequer, the Clerk shall not take for his fee above 2.s. only; nor for a Record of Nisi prius with the Writ but 2.s. onely, as afore this time was wont to be done and used.

Vid.in the Office of the Kings Remembrancer. Mich.26 H.6. Rot.46. See in the end of a book containing many little books, as Fitzherberts Justice of Peace, Carta Feod, &c. the fees of the Offices of the Exchequer.

But it shall be necessary to set down the duties of the Kings Remembrancer, and of the Lord Treasurers Remembrancer.

The office of the Kings Remembrancer doth consistet principally in eight duties. His first is to write Proces against Collectors of Customes, Subsidies, and Fifteens. 2. He entreth in his Office all Recognizances before the Barons, and taketh bonds for any of the Kings debts, for observing of orders, or for appearances, and his duty is to make out Proces upon every of them. 3. He maketh Proc. upon Informations upon penall statutes, all which Informations are entred in his office. 4. He maketh Bills of composition upon informations upon penall statutes. 5. He taketh the stalment of debts and entreth them. 6. The Clerk of the Star-chamber certifieth into his office the fines set in the Star-chamber; this officer maketh a Record thereof, and draweth them down into the Pipe. 7. Into this office ought to be delivered to be safely kept, all Assurances, Conveyances, and Evidences, whereby any Lands, Tenements, Hereditaments, or other things are granted to the King. 8. Also there is a Court of Equity holden in the Exchequer Chamber by English Bill: all the Bills and proceedings thereupon are entred in the office of this officer. See the statute of 5 R.2. cap.14. stat.1.

The duties of the Kings Remembrancer.

The office of the Lord Treasurers Remembrancer principally consisteth in eight duties. 1. His duty is to preserve the broad-spreading and fruitfull trees of Tenures so many wapes beneficiall to the Crown, and the jurisdiction of the Court of Wards, which sometimes were within the survey of this Court, but since taken from it. He maketh out Proces for the Kings revenue by reason of the tenures of the King (Wards excepted.) 2. He maketh Proces of Fieri fac' and Extent for debts due to the King either in the Pipe, or with the Auditors. If a Clerk of this Court make any Writ of Proces for a debt which hath been paid and the Bailies thereof joyned and allowed, he shall lose his office, and be imprisoned untill he hath satisfied the party so much as by the discretion of the Treasurer and Barons he is endamaged. 3. He maketh Proces against all Sheriffs, Escheators, Receivers, and Bailiffs, to bring them to account. 4. To make an Entry of Record, whereby it appeareth whether Sheriffs and other Accountants pay their profters due at Easter and Michaelmas. 5. He maketh another Entry of Record, to the end it may be known whether Sheriffs and other Accountants keep their dayes of prefixion. 6. The Green-wax is certified into his office, and are by him delivered to the Clerk of the Estreats, as

The duties of the Lord Treasurers Remembrancer.

See hereafter in the Chapter of the Court of Wards. 1 R.2.cap.5.

hath

hath been ſaid. 7. There ought to be brought into this Office all the accounts of Cuſtomers, Controllers, and all other accounts, to make thereof in this Office an entry of Record, to avoid all delay and concealment in the Kings buſines. 8. See the ſtatute of 5 R.2.cap.14.ſtat.1.

Concerning theſe Officers there is an excellent law made in 5 R. 2. whereby it is enacted, [That from henceforth no Baron of the Exchequer, Clerke of the Pipe, Remembrancer, Oppoſer, Controller, Clerk of the Pleas, and Clerke of the Forein ſummons, Auditor, or other chief Officer of the Exchequer be made, unleſſe he be well learned in the Law, or otherwiſe very skilfull in the courſes and uſages of the Exchequer.] Here is the heart-ſtring of this Court, for albeit the lawes and orders thereof be moſt excellent, yet the benefit thereof conſiſts in good and skilfull Officers and Miniſters. Rot.Parl.5 R.2. nu.105. and worthy to be printed.

Theſe things being underſtood, let us now peruſe our ancient Authors, for out of the old fields muſt come the new corne.

Eient nous Treaſorers. Hereby it appeareth being in the Plurall number, that there be two Treaſurers, whereof we have ſpoken before. There is alſo a Treaſurer of the Kings Chamber, Theſaurarius Cameræ Regis, which is not accountable in the Exchequer, but to the King himſelfe. If the King appoint ſome whom he truſts to take his account, this is eſteemed to be done by the King himſelf, Qui per alium facit, per ipſum facere videtur. Rot.Parl.3 H.6. nu.47.

¶ Et nous Barons illonques juriſdiction. * All judiciall proceedings according to law in the Exchequer, are coram Baronibus, & not corã Theſaurario & Baronibus: But the Court of Equity holden in the Exchequer Chamber is holden before the Lord Treaſurer, Chancelor, and Barons. Of this Court we have given a touch before, and ſhall treat more hereafter. Note the judiciall proceedings before the Barons are in Rolls, but they are not numbred as in other Courts. 28 H.6.11,12. 5.R 2.ca.9. ſtat.1. 20 E 3.cap.2. *The Court of Equity in the Exchequer Chamber.* See hereafter cap.13.pag.118. Rols not numbred.

The Oath of the Barons of the Exchequer expreſſing their duties conſiſteth upon ten Articles. 1. That well and truly he ſhall ſerve in the Office of Baron of the Kings Exchequer. 2. That truly he ſhall charge & diſcharge all manner of people, as well poore as rich. 3. That for highnes nor for riches, nor for hatred, nor eſtate of no manner of perſon or perſons, nor for any deed, gift, nor promiſe of any perſon the which is made to him, nor by craft, nor by ingen he ſhall let the Kings right. 4. Nor none other perſons right he ſhall diſturbe, let or reſpite contrary to the lawes of the land. 5. Nor the Kings debts he ſhall put in reſpite, where that they may goodly be levied. 6. That the Kings need he ſhall ſpeed before all others. 7. That neither for gift, wages, nor good deed, he ſhall * layne, diſturbe, nor let the profit or reaſonable advantage of the King in the advantage of any other perſon, nor of himſelfe. 8. That nothing he ſhall take of any perſon for to doe wrong or right, to delay or to deliver, or to delay the people that have to doe before him; but as haſtily as he may them goodly to deliver without hurt of the King, and having no regard to any profit that might thereof to him be therein, he ſhall make to be delivered. 9. Where he may know any wrong or prejudice to be done to the King, he ſhall put and doe all his power and diligence that to redreſſe; and if he may not doe it, that he tell it to the King; or to them of his councell, which may make relation to the King, if he may not come to him. 10. The Kings Councell he ſhall keep and layne in all things. *Layne, i. to conceale or hide.

In the Exchequer at the ſuit of the King in an Inforamation of intruſion of lands, wherein iſſue is joyned, which may be tried by the Country; yet where the King hath a direct Record or Records for the manifeſtation of his title, the Kings Attorny may pray that the triall may be by Records, whereof you may reade a notable caſe, Mich.27 & 28 Eliz. in the Exchequer where the caſe was, That in an Inforamation of intruſion into certaine lands, &c. againſt Savil, the iſſue was whether certaine lands belonged to a houſe or no, and upon a triall by Record judgement was given againſt Savil. Afterwards Savil the defendant died, and his ſonne and heir brought a Writ of Error in the Exchequer Chamber, where it was holden, that this kinde of tryall by Records was before the ſtatute of Triall by Record. Mich. 27 & 28 El. In Scaccar. inter Ieroigne & Savil. 37 H.6.10,11,12.

For triall by Records, vid. Mich. 32 & 33 E. 1. coram Rege. Robertus Archiep. Cant. &c. Hil. 8 E. 2. coram Rege, Cornwall. Walterus Epiſ. Exon. &c.

33 H. 8. cap. 39. the words whereof be, That all and every triall and trialls of all manner of Suits, Bils, Plaints, Informations, &c. and Iſſues in the Court of Exchequer, ſhall be made and tried by due examination of Witneſſe, Writings, Prooſes, or by ſuch other wayes or means, as by the Court of Exchequer ſhall be thought expedient; and that every ſuch Judgement, Decree or Decrees, ſhall be good, perfect, and in full ſtrength, force, and effect in law, to all intents, conſtructions, and purpoſes. And yet, notwithſtanding the generality of theſe words, if a Judgement be given upon a triall by Record, a Writ of Error doth lye thereupon; becauſe, as to that point, this Act is but in affirmance of the Common Law.

22 E. 3. nu. 17.

It was petitioned in Parliament, that remedy might be found, that no Accountant in the Exchequer doe run in iſſues before he be warned. The Kings anſwer was, The Proces therein ſhall be firſt a *Venire fac'*, then a *Diſtringas*, and after a Writ out of the Chancery to the Treaſurer and Barons.

51 E. 3. nu. 27.

It was alſo petitioned in Parliament, that ſuch as owe to the King may upon their account be allowed of all ſuch ſums, as be due unto them, or to any of his Anceſtors: whereunto the King anſwered, The Treaſurer and Barons ſhall make allowance of due debts.

So great care was taken by the Court of the Exchequer (which is the center of the Kings revenue and profit) that no man might ſue or plead for their diſcharge of any debts, account, or other demand, without having expreſſe commandement by Writ or Letter of the Great Seal. But by the ſtatute of 5 R. 2. it appeared, that the parties ought to have been received thereunto, according to the Law, without any ſuch Writ or Letter: and that the obtaining of ſuch Writs or Letters was to the great diſquietneſſe, miſchiefe, and delay of the parties impeached, and no advantage to the King. And where before that time no plea could be allowed in the Exchequer by Attorny, but in proper perſon: by the ſaid Act it is ordained that the Barons of the Exchequer ſhal have full power to hear every anſwer of every demand made in the ſame: ſo that every perſon that is impeached or impeachable of any cauſe by himſelf or by * any perſon, ſhall be received in the Exchequer, to plead, ſue, and have his reaſonable diſcharge without carrying or ſuing any Writ or other commandement whatſoever. So as by this Act both theſe miſchiefs are provided for. And out of this Act this generall concluſion may be juſtly collected, that ſuch courſe of the Exchequer as tendeth to the diſquietneſſe, miſchiefe, and delay of the Subject, and no advantage to the King, is againſt law, and ought not to be allowed. And it is to be obſerved, that Britton doth joyn in this clauſe, The Treaſurers and Barons.

5 R. 2. cap. 9. Courſe of the Exchequer againſt law, &c.

* That is, by his Attorney: and therefore the admittance of an Attorny in theſe caſes, is not *ex gratia curiæ* (as is ſaid in the common pleading) but *ex debito juſtitiæ*.

[a] And into the Exchequer Chamber or the like, all caſes of greateſt difficulty in the Kings Bench or Common Pleas, &c. are, and of ancient time have been adjourned and there debated, argued, and reſolved by all the Judges of England and Barons of the Exchequer. See more of this Court infra cap. 13. pagin. 121.

[a] *Tempore regis Johannis*, the Abbot of Crowlands caſe. *Juſticiarii hæc audientes urgentes de Banco, cum Baronibus Scaccarii & dominis regis fidelibus illic reſidentibus colloquiis, &c. Rot. in Scaccario de Crowland. Pl. Coronæ coram Juſtic. Itinerantibus apud Turrim London. An.* 4 E. 1. *Rot. Clauſ.* 13 E. 1. *infra p.* 121. *Hil.* 32 E. 1. *Coram Rege wigorn.* Mic. 6 E. 2. *in Communi Banco* Deſpencers caſe. Mic. 11 E. 2. *Coram Rege* caſe of the Burgeſſes of Great Yarmouth.

4 H. 6. 12. b. 5 E. 4. 7. 7 E. 4. 14. b. 16. b.

¶ A Oier & Terminer touts les cauſes que touchont nous debts. Here debts are taken for all manner of duties due to the King.

¶ Et auxi a nous fees. Here the tenures of the King (whereof we have ſpoken before) are expreſſed. And albeit there be many tenures of the King both in Capite, and by Knights Service of ſome Honour or Mano, &c. yet there be many more by the error or negligence of Sollicitors, by ſuing out of licenſes or pardons of alienation, where in troth the Manors or lands were not holden of the King in Capite.

Mich. 39 & 40 El *Per touts les Juſtices.*

But Mich. 39 & 40 Eliz. it was reſolved by all the Judges of England, when I was Attorny Generall: That if a man purchaſe a Licenſe or Pardon, and after

after being called into the Exchequer do plead the license or pardon, that neither the purchase nor pleading is any conclusion, but the tenure may afterwards upon another alienation be traversed or denied. For the words of the license or pardon be, Quæ de nobis tenentur in capite (ut dicitur;) for neither the charge in this case is direct being grounded upon a license or pardon, nor the plea; for the license or pardon is pleaded, as it is, ut dicitur: and therefore neither the one nor the other doth conclude. But if he in his plea doth by expresse words (with a bene & verum est &c.) confesse a tenure, in Capite, and in discharge thereof plead the pardon or license in discharge thereof, there is a conclusion wrought: and so are the books to be intended: which resolution I heard and observed, and have reported it for advancement of truth and right. 46 E.3.33. 29 Ass.38. 7 E.6.Estoppel. Br.222.pl.com. 398.

Concerning licenses of alienation, and the short pleading of licenses and pardons, there is a profitable statute made Anno 18 Jac. Regis, and another Anno 1 Jac.cap.26. concerning orders of the Exchequer. 18 Iac.cap. 1 Iac.Reg.ca.26.

¶ Et les incident choses sauns les queux, &c. Quando lex aliquid alicui concepit, concedere videtur & id sine quo res ipsa esse non potest.

¶ Et que ils eyent power a constter des dettz que lendoit a nous dettors per ou nous puissont pluis toft approcher a nostre dett. This is the ancient prerogative of the King, as it appeareth in our books. 20 E.3.ley.53. 8 H.5.4.

The King brought an action of debt in this Court against a Prior Alien. The Prior had Proces against A who detained goods from him, without which he could not answer the King. A came and claimed the goods as his tithes as Parson of D, the Prior claimed the tithes as Parson of S; and thereupon issue taken for the King triable in the Exchequer. 38 Ass.p.20.

If he that is in execution will in this Court confesse himselfe debtor to the King, where he is no debtor of Record, he shall be remanded to the first prison, and after the creditor be satisfied, then to be committed unto the Fleet untill he hath paid the summe confessed. 1 R.2.cap.12.

¶ Solonq; le discretion des Treasorers & Barons, &c. soients a rents a fearme a eux que pluis voillent doner. To the end that no lands in the Kings hands, which ought to be to the Kings profit, should be without a Farmor that should yeeld a rent to the King, the Treasurer in certain cases, and with certain cautions ought to make a Warrant to the Great Seal for demising thereof, that is to say, not only of lands extended, of lands during the vacation of any Abbey, and of lands seised for an alienation without license, and before 23 H.8. of land in ward, or the like upon uncertainties, but also of the demeans of the Crown out of lease, &c.

The lease will be best expressed by an example, first of lands extended. Rex omnibus ad quos &c. Salutem. Sciatis quod per manucaptionem Walteri Mathew de Westm. in Com Mid Yeoman, & Nich. Whitfield de eadem, Yeoman, Commisimus Ricó Foster, custodiam unius shopæ, 30 acr terræ, 3 acr prati, & 4 acr pasturæ cum pertin in Stanford in com Lincoln, quæ fuerunt Silvani Southorpe, quæ in manus Regis Edwardi nuper Regis Angliæ tertii pro 138 li. 6.s.8.d. in quibus idem Silvanus præfato nuper regi tenebat, seisiti fuerunt, & in manibus nostris ea de causa adhuc existunt. Habendum à festo Sancti Michaelis Anno regni nostri 13 usque finem 10 annorum ex tunc proxime sequen & plenarie complendorum. Reddendo inde nobis per annum in custodia prædicta 25 s, prout nobis responsum est, ad festa Paschæ, & Sancti Michael per æquales portiones. Proviso semper quod si aliquis alius dare voluerit de incremento per annum pro custodia prædicta sine fraude vel malo ingenio, quod tunc dictus Richardus tantum pro eadem solvere teneatur, si custodiam prædictam habere voluerit. In cujus rei, &c. Teste R. apud Westm. 7 die Novemb. Anno regni nostri decimo sexto. In Original. Anno 16 E 4. Rot. 13. Nota Certain five things. 1. *Per manucaptionem.* 2. *Commisimus.* 3. *Custodiam.* 4. Yeelding a rent. 5. *Proviso, quod si quis alius plus dare voluerit.* Nota Britton sup. *A ceux que pluis voilent doner* See 27 H.8.cap. 11.

Note by many precedents the Lord Treasurer may make a Warrant to grant the lands extended, either for years, or quam diu in manibus nostris fore contigerit.

The Lord Treasurer made a Warrant to the Lord Chancelour to demise to John Pempons land parcell of the Dutchy of Cornwall for the tearm of fifteen Rot.pat. 5 H.6.

11 H.6.28.b. 8 H.6.34.Br. Lease 71. Register 295. See for this word Commissimus. Vide 27 H.8. ca.1.a speciall Proviso for the Lo. Treasurer. * 32 H.6.ca.5. 17 R.2.cap.5. 4 H.4.cap.18. Dier fo.303.

See in the Chapter of the Court of Wards. *Vid.Pl Cō.491. * Hil.18 E.1.f.9. nu.128.

Second part of the Inst. Confir. Cart. Vi supra cap. Parl.p 29.

Mirror. Ockham.

2 E.3.25. Rot.Par.31 E.1. m.12.Dors.

Nota, the robbery of the King of his treasure is *damnum inæstimabile.*

*2 E.3.25. Jeffery Sharlags case. 14 E.3 tit.Scire fac' 122. 44 E.3. 27.Regist.187.b. Prohibit.38. aff. p.20.Pot.Par. 1 R.2.nu.64. 2 H.4.11. Rot.Par.2 H.4. 101. *Dat' est nobis intelligi.* Rot.Par.11 H.4. 54.56.64 ibid. 13 H.4.32. 8 H.5.Ley 66. 20 E.3.Ley 52. 32 H.6.14. 5 E.4.4.b. 7 E.4.30.

reares in the like form of words as the before recited Lease was. This lease was pleaded in 11 H 6. and though the Lease was by the words of Commissimus and Commissimus custodiam terra, &c. yet in pleading the Lessee pleaded a demise of the land it selfe, and there allowed to be good, which is worthy of observation.

Vide in Original' in Scaccario de Anno 21 & 22 H.7. Rot. 4 & ibid. 23 H.7. Rot.12. many such leases. But of ancient time, as it appeareth by Britton, both the Treasurer and Barons did demise, &c. * Letters Patents of the Ainage shal passe only by the Lord Treasurers warrant. And the gift of the office of the Escheators belongs to his office. Vide in Chapter of the Court of Escheator.

By the statutes of 8 H. 6. cap. 16. and 18 H. 6. cap. 6. it appeareth that the Chancelor or Treasurer had power to make leases in certain cases of Wards lands: but that is altered by the statute of 32 H. 8. of erection of the Court of Wards. * Note the statute of 18 H. 6. ca. 1. extends onely to the Kings warrant and not to the warrant of the Lord Treasurer.

* It is to be observed that when in any Act of Parliament or other Record the Treasurer is named for demising, or other intermedling with any of the Kings Revenue, it is to be intended of the Treasurer of the Exchequer.

¶ De nous customes de quirs & leynes, &c. What these customes were appeareth in the Second part of the Institutes, by the statute of Confirmation Cartarum, the last branch. and the Exposition upon the same, whereby it appeareth that the King had no Custome but such as was granted to him by Act of Parliament.

¶ Le Schequer est un place quarre. It is foursquare and the Carpet that sometime lay upon it had wrought in it the form of a Chesse board, and thereupon it was called the Exchequer: and about the end of the reign of E.1. this Court was new built, and therefore in 2 E.3. it was called the novell Exchequer, and it was new built upon this occasion. Both the parts of the Exchequer were of ancient building, and weak; Fourscore and one persons (whereof the Abbot of Westm' and forty eight of his Monkes were part) brake into the Receipt, and feloniously robbed the King of a hundred thousand pounds, ad damnum inæstimabile, saith the Record. All these fourscore and one were indicted of this felony, and committed to the Tower of London, &c. and this was the occasion of the new building of both these parts of the Exchequer.

¶ Qui solement est ordeine pur le prowe le roy. Here is a short but an effectuall description of the jurisdiction of this Court, that is, for the profit of the King. This profit is either immediate, or mediate: [a] Immediate, as of lands, rents, franchises, hereditaments, debts, duties, accounts, goods, chattels, and other profits, and benefits whatsoever due to the King. [b] Mediate, as first, the privilege of the Officers, and * Ministers of the Court: for two things doe principally support the jurisdiction a Court, viz. the just preservation of the dignity of it, and the due attendance of the Officers and Ministers of the same to sue and be sued in this Court. 2. [c] By Quo minus. 3. It extendeth (as hath been said) to the debtor of the Kings debtor. 4. To prisoners in this Court to be sued here. 5. To accountants that have entred into their account, except [d] Collectors of Dismes, they shall not be sued by bils, neither if he be sued in any other Court, shall he have the privilege of this Court.

¶ Ou deux Chivaliers, & 2 Clerkes, ou 2 homes lettres. 2 Chivaliers be hereafter explained. 2 Clerks, ou 2 homes lettres, the one is intended to be the Baron of Counte, the other the Clerk of the Pipe.

21 E.4. 44,45. &c. 8 H. 6. 34. 36 H. 6. 26. Li. 5 f. 62. action sur le case. 11 H. 7.26. [b] Stat. de Rutland. 10 E.1. * Register 187. F.N.B. 90.f. Information e Intrusion ou trans. & 217. c. terræ taile. Vid. 32 H. 8. cap. 39. 16 Eliz. Dier 328. [c] 14 E.3. breve 89. 20 E. 3. Ley 52. 2 H.4.9. 8 H.5.6.10. 8 H. 5. Ley 66. 11 H.7. 26. Pl. Com. 322. Lib.6.fol.18. [d] 1 R.3.cap.14. 5 R.2.cap.9.stat.15 the Barons shall hear, &c. without any writ, letter or commandement. 4 H.4.cap. 9. 7 H.4.cap.11. concerning Commissions. 13 Eliz. cap. 9. Sewers. 14 E.3. ca.22. Weights. 13 R. 2. cap. 2. No recognizance or bond in double.

¶ De

¶ De ſes fees & franchiſes **Of fees, that is, tenures, whereof we have ſpoken before. Franchiſes, being flowers of the Crown, are notorious and known.**

¶ Et les accounts, &c. **All accounts to the King ought to be made upon oath, and it is beſt for the King to have the accounts to be taken in this Court, for accounts taken by Commiſſion are little for the Kings benefit.** [e] **The Keeper of the Wardrobe is to make his account once in the year in the Exchequer.** [f] **Once in the year the Treaſurer of Ireland ſhall account in the Exchequer of England.** [g] **The accounts of the Exchequer to be more ſhortly heard, made and ingroſſed, &c.**

[e] Stat de Rutland. 10 1.
[f] Ro. Par. 21 E. 1. Rot. 3.
[g] 5 R. 2. c. 11.

[h] **The Treaſurers of the Kings Chamber are onely accountable to the King, and not in this Court of Exchequer, but yet the King, by the advice of ſome whom he may truſt in ſecret doth take account thereof, as before is ſaid.**

[h] Rot. Par. 3 H. 6. nu. 47.

Vide recordum & Proceſſum contra Petrum de Rivalles aliàs Petrum de Oriall, Theſaurarium & Camerarium Regis totius Angliæ & Hiberniæ, & cuſtodem omnium foreſtarum, & omnium portuum maris de compoto reddit de officiis prædictis, & de judicio contra ipſum reddito per defaltam, quia venire recuſavit nisi ſalvo regis conductu, quod rex denegavit, quaſi inſolitum & indebitum. 18 H. 3. nu. 110

¶ Per le view de un Soveraign que eſt Treaſurer Dengliterre. **Of this great Officer we have ſpoken before.**

¶ Le 2 Chivaliers ſoloient ẽe 2 Barons, &c. **And herewith agreeth** Bracton, Comites vero vel Barones non ſunt amerciandi, niſi per pares ſuos ſecundum modum delicti, & hoc per Barones de Scaccario vel coram rege. Bracton lib. 3. fo. 116. b. See the 2. part of the Inſt. mag. Carta. 14.

¶ En cel place ſont auxi Chamberleins, & pluſors autres miniſters, que ne touch my molt a la ley. **Hereof we have ſpoken before.**

¶ Nul Common plea ne ſoit diſormes tenus in Leſchequer enconter le form del Grand Charter. **Upon this Act Four ſeverall opinions have been conceived.** 1. **That this Court might originally have holden plea of all Common pleas; and this they think to prove by the title of** Glanvils **book, which taking it altogether is this.** Tractatus de legibus, &c. tempore Henrici 2. compoſitus, juſtitiæ gubernacula tenente illuſtri viro Ranulpho de Glanvilla, juris regni & antiquarum conſuetudinum eo tempore peritiſſimo, & illas ſolum leges continet & conſuetudines, ſecundum quas placitatur in curia regis ad Scaccarium coram Juſticiis ubicunque fuerint. 2. **Others think that at the making of Magna Carta the Court of the Exchequer was parcell of the Kings Bench, which they inferr upon the words of this Act,** No Common plea ſhall be holden in the Eſchequer againſt the great Charter, **In which Charter** Curia noſtra **is onely intended of the Kings Bench.** 3. **That in** Magna Carta, **to which this ſtatute refers, there is no reſtraint, and therefore this ſtatute of** Artic' ſuper Cartas **reſtraineth not.** 4. **That the Ordinance of Rutland is no ſtatute, but made by the King for the order of this Court. In the** Second part of the Inſtitutes, **in the Expoſition of** Magna Carta, cap. 11. **we have ſpoken nothing of this matter, but thought good to referre it to this Act being his proper place.** Artic. ſup. Ca. t. Ubi ſupr. Stat. de Rotland. 10 E. 1. acc. * Pl. Com. 209.

As to the firſt: it appeareth by the ſaid ancient Authors, and by the authority of our books, that the Inſtitution and juriſdiction of this Court have been only for the Kings buſineſſe and profit, &c. as hath been ſaid. For the Title of Glanvils book: Firſt, it was never of his own making, for he would never have given himſelf ſuch high and ſuperlative Titles, as Illuſtri viro juris regni, &c. eo tempore peritiſſimo. **2. He that added the title ſpeaketh of three Courts,** viz. 1. In Curia Regis. 2. Ad Scaccarium. 3. Coram Juſticiis ubicunque fuerint. **For the firſt,** viz. in Curia Regis, **he intendeth Juſtice in Eire, &c. for example.** Inquirentur purpreſturæ vel in Capitali Curia, vel coram Juſticiis Regis ad tales Inquiſitiones faciend' in diverſas regni partes tranſmiſſas per Juratum patriæ ſive vicenet. 2. Ad Scaccarium, **this Court he doth mention but once (that I remember) in all his booke in theſe words.** Si vero dominus Rex aliquam cuſtodiam alicui commiſerit, tunc diſtinguitur utrum ei cuſtodiam pleno jure commiſerit ita quod nullum eam inde reddere compotum oporteat ad Scaccarium, Glanv. lib. 9. cap. 11. &c. Lib. 7. cap. 10.

which

which agreeth with the originall inſtitution and juriſdiction of the Court concerning the profit of the King. 3. Coram Juſticiis ubicunque fuerint is the Kings Bench, whereof Glanvil was Chief Juſtice, and of the Pleas in that Court is in effect the ſum of his Treatiſe.

As to the ſecond: 1. Glanvile who wrote in the reign of H. 2. doth (as hath been ſaid) name the Exchequer as a diſtinct Court for the accounts to be made to the King. 2. In the * Black Book of the Exchequer dedicated to H. 2. of the obſervations of the Exchequer, it is ſaid, Nulli licet ſtatuta Scaccarii infringere, vel eis quavis temeritate reſiſtere, habet in hoc commune cum ipſa Domini Regis Curia, in qua ipſe in propria perſona jura diſcernit, nec recordationi nec ſententiæ in eo latæ liceat alicui contradicere. Whereby it appears that the Kings bench and Exchequer were diſtinct Courts in the reign of H. 2.

* The Author of this book is Gervaſius Tilburienſis a learned man and an Officer of the Exchequer cap. 1.

To the third, our ſtatute is intituled Articuli ſuper Cart', that is, Articles upon Magna Carta & Carta de Foreſta: ſo as the ſenſe of this Act is, that the Exchequer ſhould hold no common plea no more then the Kings bench: for the form of the Great Charter is, Quod communia placita non ſequantur Curiam noſtram. Secondly, our ſtatute is but an affirmance of the Common law concerning the juriſdiction of this Court, and this doth expreſly and notably appear in the Regiſter in theſe words. Rex Theſaurar' & Baronibus de Scaccario Salutem. Cum ſecundum legem & conſuetudinem regni noſtri communia placita coram vobis ad Scaccarium prædict' placitari non debeant, niſi placita illa nos vel aliquem miniſtrorum noſtrorum ejuſdem Scaccarii ſpecialiter tangant, &c. Here it is to be obſerved that this writ of prohibition is not grounded upon the ſtatute of Artic' ſuper Cart' or any other ſtatute, but upon the Common law and cuſtome of the kingdome, which concerning the juriſdiction of this Court doth in omnibus agree with our ancient Authours and year-books, wherein you ſhall obſerve an admirable harmony and conſent in ſo many ſucceſſions of ages.

Regiſt. 187. b.

This is a ſtatute provided by the title thereof, and for that it is entred in the Parliament Roll, and in the Regiſter 187. b. it is called Statutum de Rotland.

Stat. de Rotland. 10 E. 1. Vid. Pl. Com. 121. per 2 Barons. Regiſt. 187. b.

Now it is good to know, how the Law commonly called Reſpondeat ſuperior, holdeth in this Court: in other Courts, and firſt by the Records of this Court, and then by Acts of Parliament.

Reſpondeat ſuperior.

Memorand' quod allocuto præfato Willielmo morantur nuper Vic' ſuper levatione 40. s. extract' in magno Rotulo de anno 12 in Kanc' ſub nomine William Herlizan unius Coronatorum Com' Kanc' pro falſo retorno. Idem Willielmus Vic' dic' ſuper ſacramentum ſuum quod præfatus Willielmus Herlizan non habet terr' vel ten̄ta, bona, ſeu catalla in balliva ſua, nec habuit unde dict' denar' levari poſſint. Et quia ipſe Coronator electus erat per Comitatum juxta formam ſtatuti, &c. ita quod in defectu ejuſdem Coronator' totus Comitatus ut elector & ſuperior, &c. habeant regi reſpondere, præcip' nunc Vic' quod de terris & tenementis hujuſmodi totius comitatus in balliva ſua fieri fac' prædict' xl. s. & eos habeat hic in Cr̄o clauſi Paſchæ ſuper proffrum ſuum regi ſolvend'. Ad quem diem Vic' non retorn̄ breve. Ideo ſicut alias in Cr̄o Sancti Johañ Baptiſtæ. For more precedents in the Exchequer of this kind, ſee Mic. 17 R. 2. Rot. Mich. 19 H. 8. Rot. 4. Eborum. Paſch. 30 H. 8. Rot. 30. Wiltes. Mich. 5 E. 6. Rot. 130. &c. Stat. de 52 H. 3. de Scaccario.

Int' Præcept' de Termino Sancti Hil. Anno 14 E. 3. ex parte Remem. Regis Rot. 9. in Scac' *Coronator.*

How it holdeth in other Courts, Vid. 11 E. 2. tit. det. 172. where the Sheriffs be removable as in London for their inſufficiency, reſpondeat ſuperior, that is, the Mayor and Communalty of London.

45 E. 3. 9, 10. Prior datiſe & removeable ſuffer eſchape, reſpondeat ſuperior. 14 E. 4. Pur inſufficiency del Bailie dun libertie reſpondeat dominus libertatis. Vid. 44 E. 3. 13. 50 E. 3. 5. 14 H. 4. 22. 11 H. 6. 52. 30 H. 6. 32. W. 2. cap. 2. Si non habeat Balivus unde reddat, reddat ſuperior.

There is a generall ſtatute concerning all the Courts of the King, worthy of obſervation in theſe words.

2 H. 6. cap. 10.

Item, To the intent that better and more ſure Government be had within

within the Courts of our Lord the King for his profit, and eaſe of his people, which have to purſue, and doe in the ſame. It is ordained and eſtabliſhed that all the Officers made by the Kings Letters Patents royall within the ſaid Courts, which have power and authority by vertue of their offices of old times accuſtomed, to appoint Clerks and Miniſters within the ſame Courts, ſhall be charged and ſworne to appoint ſuch Clerks and Miniſters, for whom they will anſwer at their perill, which be ſufficient, faithfull, and attending to that which pertaineth to them in performance of the buſineſſe, as well of the King, as of his people.

In the ſame manner we have ordained in the right of the Barons of the Exchequer, and we have expreſly charged them in our preſence, that they ſhall doe right and reaſon to all our ſubjects, great and ſmall, and that they ſhall deliver the people reaſonably and without delay of the buſineſſe which they have to doe before them, without undue tarrying as hath been done in times paſt.

20 E. 3 ca. 2. Hereby it appeareth that to them belongeth doing of right and reaſon in legall proceedings.

It was reſolved in the caſe of Auditor Povie, that if A be indebted to B, and B is indebted to the King, that the King by his prerogative may levy his debt upon A: but this levying ought to be of an immediate, and not of a mediate debtor to the debtor of the King. As if A be indebted to B, and B to C, and C to the King, the King cannot levy his debt of A, for then it might be levied in infinitum, quod reprobatur in jure, and this appeareth in our books.

Mich. 13 Ja. *In Bank le roy in Prohibition.* 8 H. 5. 4. 45 E. 3. *Deſies tantum* 12.

For aſſignment of debts made to the King, ſee in my Reports.

Lib. 5. fo. 89, 90.

By the ſtatute of 7 Jac. no debt ſhall be aſſigned to the King his heirs or ſucceſſors by or from any debtor or Accountant to his Majeſty, his heirs or ſucceſſors, other then ſuch debts as did before grow due originally to the Kings debtor.

7 Jac. cap. 15.

No obligation, recognizance or ſtatute made for ſaving harmleſſe or performance of Covenants, &c. though it be forfeited, or for any cauſe, other then a due debt, can be aſſigned to the King by any of his debtors. Theſe aſſignments of debts to the King are not favoured in law when the Kings immediate debtor is able to pay his debt: for by the aſſignment at the Kings ſuit, the body, lands and goods of the debtor to the Kings debtor are liable to the King, whereas at the ſubjects ſuit, he could have had but his body onely by Capias ad ſatisfaciend', or his goods onely by Fieri fac', or halfe his lands and goods by Elegit. By the ſtatute of 1 R. 2. a penalty is provided for him who confeſſeth a debt to the King (that is not debtor to the King of record) to delay the execution of others.

1 R. 2. cap. 12.

The Barons of the Exchequer are the ſoveraign Auditors of England, for if a man aſſign Auditors to a Bailif or receiver to account, and the Auditors will not allow juſt and reaſonable allowances but commit the Bailif or receiver to priſon, ſuch priſoner may have an originall writ of Ex parte talis returnable before the Treaſurer and Barons of the Exchequer, &c. for his reliefe in that behalfe.

Fleta li. 6. ca. 64. 2 E. 3. 12. 14 E. 3. account 74. 8 E. 4. 16. F. N. B. 129. f. Regiſt. 137.

Upon the Accountant in the Exchequer of B. Fulham the Kings Butler, he demanded allowance of certain parcels of wines given by the King to certain perſons by word of mouth without writing, and it was diſallowed by the rule of the Court.

Rot. Clauſ. anno 4 E. 3. m. 2.

Upon the account in the Exchequer of Richard Bury Keeper of the Wardrobe, he demanded allowance for certain Veſſels of gold and ſilver, and certain Jewels given by the King ore tenus to Iſabell Queen of England, and others to Philip Queen of England Conſort of the King, & non allocatur by the like rule of the Court: for the gifts by word in both theſe caſes are void, which with Petilians caſe that followeth are good rules to eſtabliſh the law in a caſe wherein there hath been variety of opinions in our books.

Rot. Clauſ. anno 4 E. 3. m. 19.

25 H. 8. Prærog. B. 61. 14 E. 4. 2. 2.

Hil.

Hil. 6 E. 4. Rot. 14. in Scaccario Inter Brevia in Dorſ. Petilians caſe. A warrant under the Signet is not ſufficient to iſſue any Treaſure of the King out of the Receipt, but it muſt be under the Great or Privy Seal.

Regiſt. 192 a.b. & 193. If the Barons doe not allow unto an Accountant before them ſuch juſt demands as he maketh, he may have a writ De allocatione facienda, directed to the Treaſurer and Barons, commanding them to allow the ſame.

Of a Liberate *for payment of a penſion or debt, &c.*

A Liberate is an originall writ iſſuing out of the Chancery, and is directed to ſome Officers that have of the Kings money in his hands to pay over a penſion, debt, or duty. And it is not called a Liberate by reaſon of any ſuch word contained in the writ, (as for the moſt part writs are) for the words be Quod ſolvas or ſolvatis, but it is ſo named ab effectu. But ſuch a Writ cannot be directed to the Kings Fermor to pay a penſion, &c. becauſe, though the ferm or rent be behind, yet it is not the Kings untill it be paid, and all the writs in the Regiſter are directed as is aforeſaid to Officers, as to the Treaſurer and Chamberlain, to a Cuſtomer, &c. The forme of the writ appeareth in the Regiſter 192, 193. And there it appeareth that there be two kinds of writs of Liberate, one dormant or currant and continuall, and another hac vice and particular. And it is ſometimes accompanied with a writ of Allowance, as there you may read.

If the Officer have ſufficient in his hands to pay, &c. at the time of the Liberate delivered to him, he is become debtor (by Act of law) to the party, for which he may have an action of debt: but after the Liberate ſued out, and before the delivery, the King may diſcharge the Officer of the Kings money in his hands. And if the King deceaſe before the delivery of the Liberate, the Officer hath no warrant to pay it.

If the Officer at the time of the delivery of the Liberate have of the Kings money to pay but part, and not the whole, the writ is no warrant to him to pay part. See 21 H. 6. tit. det. 43. 17 H. 6. 9. 37 H. 6. 24, 25. 9 E. 4. 12. 14. 1 H. 7. 8. 2 H. 7. 9. F. N. B. 121. I. Br. Tit. Taile Deſchequer.

Vid. Mag. Cart. cap. 22. Liberationem antiquitus ſtatut, id eſt, precium antiquitus ſtatutum.

The courſe of the Eſchequer is, that as ſoon as a Sheriffe or Eſcheator enter into his account for iſſues, amerciaments and mean profits, to mark upon his head O. Ni. which is as much to ſay, as Oneratur, niſi habeat ſufficientem exonerationem, and preſently he is become the Kings debtor, and a Debet ſet upon his head, and thereupon the parties peravaile are become debtors to the Sheriffe or Eſcheator, and diſcharged againſt the King.

Dier 7 El. 238. The ancient courſe of the Eſchequer hath been, that if in an Information of Intruſion into lands or tenements the Defendant plead not guilty, he ſhall loſe the poſſeſſion; and it is ſaid that the reaſon of this courſe is, firſt for that regularly the Kings title appeareth of the record, and therefore the Defendant may take knowledge thereof, and the rather for that in every information of Intruſion it is ſpecified of whoſe poſſeſſions the lands, &c. were: but if the Defendant plead not guilty, the Kings learned Councell cannot know the Defendants title, to provide to anſwer the ſame, as the Defendant may doe to the Kings title.

CAP.

CAP. XII.

A Court to enquire of, and certifie unlawfull and untrue Accounts in the Exchequer.

THis Court sitteth by Commission under the Great Seale by force of the statute of 6 H. 4. directed and sent, together with the tenour of the account, to the most lawfull and discreet persons in the Counties, where the Accountants be Officers, to enquire and certifie the profits which the Sheriffs, Escheators, Almagers, Controllers, and other the Kings Officers have received, &c. by them upon their said accounts deceitfully concealed, &c. and being attainted of the said frauds and deceipts, they shall forfeit treble the value, and their bodies to prison, untill they have made fine and ransome to the King, after the discretion of the Judges.

6 H 4. cap. 3. See Rot. Parl. 6 H. 4. nu. 59. for the print swarveth from the Record.

But (as hath been said before) it is certain that it is ever most for the Kings benefit that Accounts be yearly taken in the Exchequer, and not by Commission: and to that end an Ordinance was made in the Parliament holden Anno 21 E. 1. in these words: Dominus Rex vult & præcipit, quòd de cætero singulis annis semel in anno computus Vasconiæ & Hiberniæ per Constabularium Burdegaliæ, & Thesaurarium Hiberniæ reddantur ad Scaccarium Angliæ, & ibid. audiantur per Thesaurar & Barones suos. A fortiori of Accounts within the Realm.

Rot. Parl. Anno 21 E. 1. Rot. 3. Vide Rot. Parl. 28. E. 1. Nich. de Clere Thesaurarius Hiberniæ.

And of the Court of the Exchequer we will end with an old Verse ingraved in Stone in the Exchequer wall:

Ingrediens Jani, rediturus ex æmulus Argi.

The Chief Baron is created by Letter Patents, and the Office is granted to him Quamdiu se bene gesserit, wherein he hath a more fixed estate (it being an estate for life) then the Justices of either Bench, who have their Offices but at will: And Quamdiu se bene gesserit must be intended in matters concerning his Office, and is no more then the law would have implyed, if the Office had been granted for life. And in like manner are the rest of the Barons of the Exchequer constituted, and the Patents of the Attorny Generall, and Solicitor are also Quamdiu se bene gesserit.

See Lit. 1 part of the Instit. Sect.

CAP. XIII.

The Court of Equity in the Exchequer Chamber.

THe Iudges of this Court are the Lord Treaſurer, the Chancelor, and Barons of the Exchequer. Generally, their juriſdiction is as large for matter of Equity, as the Barons in the Court of the Exchequer have for the benefit of the King by the Common law: for all the proceedings both in this Court of Equity and of that by the Common law ought to be, as hath been ſaid, for the profit or benefit of the King, or touching the King: and if in either Court they hold any plea, which is not for the profit or benefit of the King, or which toucheth not the King, there lyeth a Prohibition, which, as is aforeſaid, appeareth in the Regiſter: for all are ſaid Communia Placita which are not Placita coronæ.

Art. cl. r. cap. 4. Regiſt. fol. 187. b. ſtat. de Rotland. cap. ultimo.

By the Statute of 33 H. 8. cap. 39. they have full power and authority to diſcharge, cancell and make void all and ſingular Recognizances and bonds made to the King for payment of any debt or ſumme of money, or for performance of conditions, &c. upon ſhewing the Acquittance, &c. or any proof made of payment and performance. Alſo to cancell and make void by their diſcretion all Recognizances made for any appearance or other contempt. And that if any perſon of whom any ſuch debt or duty is demanded, alledge, plead, declare, or ſhew in the ſaid Court ſufficient cauſe and matter in law, reaſon and good conſcience in barre or diſcharge of the ſaid debt or duty, and the ſame matter ſufficiently proved in the ſaid Court: then the ſaid Court ſhall have power and authority to judge & allow the ſaid proof, and clearly acquit and diſcharge ſuch perſon and perſons. Alſo lands chargeable to the Kings debts in the ſeiſin and poſſeſſion of divers and ſundry perſons, the ſame ſhall be wholly and entirely, and in no wiſe ſeverably liable to the payment of the ſaid debt and duty: but in the ſaid Act of 33 H. 8. all manner of eſtates, rights, titles, and intereſts, as well of inheritance as freehold, other then joyntures for term of life, are excepted.

Cancell.

Cancell.

Matter in law, reaſon and good conſcience. Lib. 7. fo. 18. Sir Thomas Gecils caſe, and reſolved by Engliſh bill in the Exchequer Chamber. See there divers preſidents. * Lib. 7. fo. 20. ubi ſupra. Et. lib. 3. fo. 12. Sir Wil. Herberts caſe. Inheritance. Freehold.

By the ſaid Act of 33 H. 8. ſpeciall juriſdiction is given to the Court of Augmentation, when title is pretended to any Manors, Lands, Tenements, or Hereditaments, bargained, ſold, or exchanged by the King, upon which Letters Patents there is or ſhall be reſerved any annuall Rents or Farms, patable in the Court of Augmentations, and divers other clauſes which gave to the Court of Augmentation juriſdiction. But the Court of Augmentation is but in ſhew annexed to the Court of the Exchequer, and not de jure, as hereafter it appeareth in the Chapter of the Court of Augmentations. And therefore this Court of Exchequer Chamber cannot claime any juriſdiction given and appropriated to that Court, for that the Court of Augmentations is diſſolved.

I. S. holdeth lands of the King by fealty and yearly rent, and maketh a Leaſe thereof for years to A. B. pretends that I. S. leaſed the ſame to him by a former Leaſe; albeit there is a rent iſſuing out of theſe lands to the King, yet neither A. nor B. can ſue in this Court by any privilege in reſpect of the rent, for that the King can have no prejudice or benefit thereby: for whether A. or B. doth prevaile, yet muſt the rent be paid: and if this were a good cauſe of privilege, all the lands in England holden of the King by rent, &c. might be brought into this Court.

32 E. 3. tit. Aid *Le Roy* 1. 35 H. 6. 56.

But if black acre be extended to the King for debt of A. as the land of A. and the King leaſeth the ſame to B. for years, reſerving a rent: C. pretends that A.

had

had nothing in the land, but that he was ſeiſed thereof, &c. this caſe is within the priviledge of this Court, for if C prevaile the King loſeth his rent.

The King maketh a Leaſe to A of Black acre for years reſerving a rent, and A is poſſeſſed of a tearm for years in White acre, the King may diſtraine in White acre for his rent, yet A hath no priviledge for White acre, to bring it within the jurisdiction of this Court.

Note Reader, where our Books ſay, that the King may diſtrain for his rent in all the other lands of his tenant, of whomſoever the ſame be holden, it is thus to be underſtood, that the other lands muſt be in the actuall poſſeſſion of the Kings tenant, for he cannot diſtrain in thoſe lands in the poſſeſſion of his tenant for life, tenant for years, or at will. 44 E.3.45. 13 E.4.6. 8 H.5.4. Pl. com. 323 2. This prerogative holdeth not only in caſe of Rent ſervice, but in caſe of a Rent charge: and Rent ſecke. A

Some are of opinion that a Court of Equity was holden in the Exchequer Chamber before the ſtatute of 33 H.8. And then it muſt be a Court of Equity by preſcription: for we find no former Act of Parliament that doth create and eſtabliſh any ſuch Court: and if it be by preſcription, then judiciall preſidents in courſe of equity muſt guide the ſame: As to the Jurisdiction, certaine it is that there hath been of ancient time an Officer of the Exchequer called Cancellarius Scaccarii, of whom amongſt other Officers of the Exchequer Fleta ſaith thus: Officium vero Cancellarii, eſt ſigillum regis cuſtodire ſimul cum controrotulis de proficuo regni. And the Mirror ſaith, Perjure eſt per la ou il fuit Chancelor del Eſchequer vea a tiel a faire luy acquittance de tant que a voit payal Eſchequer de la deit le Roy ſouth le ſeale del Eſchequer ou delay a faire acquittance de tiel jour tanq; a tiel jour, &c. His ancient fee is 40 marks. Livery out of the Wardrobe 12 li. 17. s. 4 d. in toto 39 li. 10 s. 8 d. See 25 H.8. cap. 16. *Cancellarius Scaccarii.* Mirror. cap. 2. § 13. & cap. 5. § 2.

* The Exchequer hath a Chancelor and Seal, and the Writs uſuall in the Chancery in the Exchequer to ſeiſe land, are more ancient then Prerog. Regis. * Pl. com. 321.

Hereupon it is collected, that ſeeing there hath been time out of minde of man a Chancelor of the Exchequer, that there ſhould alſo be in the Exchequer a Court of Equity.

Where ſome doe vouch 22 E.4. tit. Petition 9. for the naming of the Chancelour of the Exchequer in granting of Writs of ſearch to the Treaſurer and Chancelor, the book is falſe printed, for it ſhould be the Chamberlaines and Treaſurer of the Exchequer: for no Writ of ſearch is directed to the Chancelor, &c. but to the Treaſurer and Chamberlain of the Exchequer, who have the cuſtody of the Records, &c.

[a] We finde a Petition of the Commons in 2 H.4. that no Writs or Priviе Seales be ſued out of the Chancery, Exchequer, or other place, to any man to appeare upon a pain, &c. to anſwer, &c. contrary to the ordinary courſe of the Common law: whereunto the King anſwered, That ſuch Writs ſhould not be granted without neceſſity. [a] Rot. Par. 2 H.4. nu. 69.

[b] Anno 3 H.5. the Commons petitioned that all Writs of Subpœna and Certis de cauſis going out of the Chancery and the Exchequer might be inrolled, and not granted of matters determinable at the Common law on pain of 40 li. The Kings anſwer was, That he would be adviſed. [b] Rot. Parl. Anno 3 H.5. nu. 46.

[c] So as in the Exchequer there are theſe ſeven Courts. 1. The Court of Pleas, 2. The Court of Accounts. 3. The Court of Receipt, 4. The Court of the Exchequer Chamber being the * Aſſembly of all Judges of England for matters in law, 5. The Court of Exchequer Chamber for errors in the Court of Exchequer. 31 E.3. cap. 8. & 31 Eliz. ca. 1. 6. A Court in the Exchequer Chamber for errors in the Kings Bench. 27 Eliz. ca. 8. 31 Eliz. ca. 1. Co. pl. Intr. fo. 2. 24. 37. And 7. This Court of Equity in the Exchequer Chamber. [c] 7 H.6.44. 6 H.7.15. 8 H.7.13. Lib. 1. fo 11. Vet. N.B. * Rot. Clauſ. in Dorſ. An 13 E.1. in ſchedula pend. *Et ſi contingat quod, &c.* Vide ſupra, pag. 110. 31 E. 3. cap. 8. 31 Eliz. cap. 1. 27 Eliz. cap. 8. 31 Eliz. cap. 1. Co. pl. Intr. fo. 2. 24. 37.

CAP. XIV.

Of First-fruits and Tenths Eccleſiaſticall.

Stat. de 32 H. 8. cap. 45. Rot. Parl. 47 E. 3. nu. 30. 7 H. 4. nu. 43. acc.

A Court of the Firſt-fruits and Tenths was raiſed, Officers conſtituted, of Chancelor, Treaſurer, Kings Attorny, two Auditors, and two Clerks: Authority given them to compound for First-fruits, Bonds taken therefore ſhould be of like force as a Statute Staple: but this Court was diſſolved by Queen Mary Parl. 1 Seſſ. 2. cap. 10.

26 H. 8. cap. 3. 2 & 3 Ph. & M. cap. 4.

These were granted to the Crown by the ſtatute of 26 H. 8. cap. 3. But all the Clergy were exonerated and diſcharged thereof afterwards, Anno 2 & 3 Ph. & Mar. cap. 4.

1 Eliz. cap. 4. obſerve the alteration and alteration.

The ſtatute of 26 H. 8. revived, and First-fruits and Tenths of the Clergy reunited to the Crown by Anno 1 Eliz. cap. 4. But no Court is revived, but First-fruits and Tenths to be within the rule, ſurvey, and government of the Exchequer, and created a new Office, and Officer, viz. a Remembrancer of the First-fruits and Tenths of the Clergy, who taketh all compoſitions for the ſaid First-fruits, and Tenths, and maketh proces againſt ſuch as pay not the ſame.

25 H. 8. cap. 5. 1 Eliz. cap. 4.

First-fruits, or Annates, Primitiæ, are the First-fruits after avoidance of every Spirituall Living for one whole year (except Vicarages not exceeding 10 li. and Parſonages not exceeding 10 Marks) but all are to pay Tenths.

Eccleſiaſticall Livings were ſometimes valued by a Book of Taxation made in 20 E. 1. which remaineth in the Exchequer, and by another taxation in 26 H. 8. which alſo remaineth in that Court. And according to this latter taxation are the values of Eccleſiaſticall Livings computed for the First-fruits and Tenths.

[a] Walſ. An. Dom. 1316. Trivet. Ranulphus Ciſtrenſis li. 7. c. 42. Polyd. Virg. lib. 8. cap. 1. Platin. Fox, &c.

What Pope firſt impoſed First-fruits, untill [a] Hiſtorians do agree, I will not trouble my ſelf.

What we finde of Record concerning First-fruits, we will ſummarily relate.

[b] 2 E. 3. Rot. clauſ. m 4.

[b] The King forbiddeth H. P. the Popes Nuntio to collect First-fruits, &c.

[c] Parl. 1 R. 2. nu. 66.

[c] That the Popes Collector be willed no longer to gather the First-fruits of Benefices within this Realm being a very novelty, and that no perſon do any longer pay them.

[d] Rot. Par. 4 R. 2. nu. 44.

[d] The Commons do petition that proviſion may be made againſt the Popes Collectors for levying of the First-fruits of Eccleſiaſticall dignities within the Realm. The anſwer of the King in Parliament is, There ſhall be granted a Prohibition in all ſuch caſes where the Popes Collectors ſhall attempt any ſuch [e] novelties.

[e] Note they were not ſo ancient with us as it pretended.

[f] Rot. Par. 6 R. 2. nu. 50

[f] Upon complaint made by the Commons in Parliament, The King willeth that Prohibitions be granted to the Popes Collectors for receiving of Firſt-fruits.

[g] 6 H. 4. cap. 1.

[g] Againſt First-fruits by Arch-Biſhops and Biſhops to the Pope of Rome, terming it a horrible miſchief and damnable cuſtome.

[h] Rot. Par. 9 H. 4. nu. 43.

[h] It is enacted, that the Popes Collectors ſhould not from thenceforth levy any money within the Realm for First-fruits of any Eccleſiaſticall dignity by any proviſion from Rome upon pain of the ſtatute of Proviſors: but this is omitted out of the print of 9 H. 4. cap. 8.

[i] 19 E. 3. tit. Juriſdiction. 22.

[i] The Biſhop of Norwich had in 19 E. 3. by preſcription time out of minde of man First-fruits within his Dioces of all Churches after every avoidance.

[k] 26 H. 8. cap. 3.

But theſe alſo were given to the Crowne [k] by the Statute of 26 Hen. 8. cap. 3.

Tenths Eccleſiaſticall, Decimæ, theſe are the Tenth part of the value of all Eccleſiaſticall

Eccleſiaſticall Livings yearly payable to the King, his Heirs and Succeſſors by the ſaid Statute of 26 H.8. and 1 Eliz. to be valued as is abovesaid.

These the Pope (as the Canoniſts hold) pretended to have De jure Divino, as due to the High Prieſt by preterr of theſe words, Præcipe Levitis atq; denuncia, cum acceperitis à filiis Iſrael decimas quas dedi vobis, primitias earum offerte Domino, id eſt decimam partem decimæ, ut reputetur vobis in oblationem primitiarum tam de areis, quam de torcularibus & univerſis quorum accipietis primitias offerte Domino, & date ea Aaron Sacerdoti. Num. 18 26. &c. Vi. Jerom. in Eze. c. 44. v. 28, &c.

But the Parliaments in 25 H. 8. and 26 H.8. were not of opinion that theſe Tenths did belong to the Biſhop of Rome; as by the ſeverall preambles thereof appeareth, which we have added; for that we have endeavored to have brought all this work to the ſeverall claims or pretences of every thing whereof we have treated. And King Philip and Queen Mary yeilded not theſe Tenths to the Pope, but (as hath been ſaid) by authority of Parliament diſcharged the Clergy thereof: which they would never have done, if they had taken them to be due to the Pope De jure Divino. And the Biſhop of Norwich could not have preſcribed to have Firſt-fruits within his Dioces, if they had been due to the Pope De jure Divino: and the rather for that Anthony de Becke, for whom the preſcription was made, was a retainer to the Court of Rome, and made Biſhop of Norwich by the Pope. 19 E. 3. tit. Juriſdiction, ubi ſup.

CAP. XV.

The Court of Augmentations of the Revenues of the Crowne of England.

THis Court was erected by authority of Parliament in Anno 27. H. 8. conſiſting of a Chancelor, Treaſurer, Attorny, Solicitor. And all lands, &c. belonging to Monaſteries, and purchaſed lands were within the ſurvey and governance of this Court. This Court could not be erected but by Parliament, becauſe a Chancelor and a Court of Equity were conſtituted. More hereof in the next Chapter. 27 H.8. cap. 27.

CAP.

CAP. XVI.

The Court of Generall Surveyours of divers of the Kings lands with power to make Leases for twenty one yeares erected by Act of Parliament in 33 H. 8.

33 H. 8. cap. 39.

Both these Courts King H. 8. by his Letters Patents Anno regni sui 38. dissolved, and erected a new Court of Augmentations by his Letters Patents. The dissolution was holden void, because they were created by authority of Parliament. Vid. the rehearsall of the Statute of 7 E. 6. cap. 2. and the erection was also void for the cause aforesaid. And thereupon the said Letters Patents, as well for the dissolution of the former, and for the erection of the new Court of Augmentations were confirmed and established by the said Act of 7 E. 6.

Bract. Nihil tam conveniens est naturali æquitati, unumquodque dissolvi eo ligamine quo ligatū est.

7 E. 6. cap. 2.
1 Mar. cap. 10.

Queene Mary according to the power given to her for dissolution of the said Court by Act of Parliament holden the fifth of October in the first yeare of her reigne, did afterwards by her Letters Patents, bearing date 23 Januarii in the same yeare dissolve the said Court of Augmentations; and the next day following by other Letters Patents united the same to the Exchequer, which was utterly void, because she had dissolved the same before she pursued her authority.

Dier 4 Eliz. 216. So resolved by all the Iudges.

CAP.

CAP. XVII.

The honourable Court of Chivalry before the Conſtable and Marſhall.

ROt. Pat. 12 H. 4. m. This Court is called Curia Militaris, and Rot. Parl. 2 H. 6. nu. 9. the Marſhall Court.

¶ *The Stile of the Court.*

The Judges of this Court are the Lord Conſtable of England and the Earl Marſhall of England, and this Court is the fountain of the Marſhall law. And the Earl Marſhall is both one of the Judges, and to ſee execution be done.

¶ *The Judges.* 4 E. 3. fo. 3. See the Firſt part of the Inſtitutes, Sect. 745. many other authorities cited.

Conſtable or Cunſtable is compounded of two Saxon words, Cuninge per contractionem Kinge, and ſtable, id eſt, columen, quaſi columen regis, anciently written Cuningſtable. Marſhall anciently written Marſcalc, likewiſe of two Saxon words, viz. *Marc* for equus; and *Stalc* curator, quaſi curator equorum: For the Marſhall Mariſchallus, and the derivation thereof, ſee the Firſt part of the Inſtitutes, Sect. 102. fol. 74. Sect. 154. fo. 106. Section 745. fo. 391.

¶ *The name.* 1. part of the Inſtitutes, Sect. 102 & 153.

This Court of Chivalry was anciently holden in the Kings Hall.

¶ *The place.*

The juriſdiction is declared by the ſtatute of 13 R. 2. ſtat. 1.

Becauſe the Commons doe make a grievous complaint, that the Court of the * Conſtable and Marſhall have incroached to them, and daily doe encroach contracts, covenants, treſpaſſes, debts and detinues, and many other actions pleadable at the Common law, in great prejudice of the King and of his Courts, and to the great grievance and oppreſſion of his people, The King willing to ordain a remedy againſt the prejudices and grievances aforeſaid, hath * declared in this Parliament by the advice and aſſent of the Lords Spirituall and Temporall the power and juriſdiction of the ſaid Conſtable in the form that followeth.

¶ *The Juriſdiction.* Rot. Par. 8 R. 2. nu. 31 not in print 13 R. 2. ſtat. 1. ca. 2. Rot Parl. 8 H. 6. nu. 38. * The Judges, Vide Infra. 1 H. 4. cap. 14. * Nota declared.

To the Conſtable it appertaineth to have conuſance of Contracts and deeds of arms, and of war out of the Realm, and alſo of things that touch war within the Realm, which cannot be determined or diſcuſſed by the Common law, with other uſages and cuſtomes to the ſame matters pertaining, which other Conſtables have heretofore duly and reaſonably uſed in their time, joyning to the ſame that every Plaintif ſhall declare plainly his matter in his petition afore that any man be ſent for to anſwer thereunto. And if any will complain that any plea be commenced before the Conſtable and Marſhall, that might be tried by the law of the land, the ſame Complainant ſhall have a Privy Seal of the King without difficulty directed to the ſaid Conſtable and Marſhall to ſurceaſe in that plea, till it be diſcuſſed by the Kings Councell, if that matter ought and of right pertaineth to that Court, or otherwiſe to be tried by the Common law of the Realm of England, and alſo that they ſurceaſe in the mean time.

¶ *The power and juriſdiction.*

See the Third part of the Inſtitutes, cap. High treaſon, pag. 26. Rot. Pat. 25 E. 3. parte 1, m. 16. 1 H. 4. between the Lord Scrip and the Earl of Sarum, the Record whereof we have ſeen. Rot. Pat. 2 H. 4. parte 1. m. 7. between Kighly and Scroop. Rot. Pat. 3 H. 4. Balleſhuls caſe. Rot. Vaſcon. 9 H. 5. nu. 14. Bullemers

lemers case. Rot. Parl. 21 R. 2. nu. 19. &c. Rot. Parl. 2 H. 6. nu. 9. Holl. Chron. 424. 3 H. 4. Sir John Annesleys case. See this case Walsing. pa. 237. Duellum percussum, Ibidem 8 R. 2. 446. John Walshes case. For this case of Walsh, see Walsing. pa. 311. and Stowes Annals 477. Howes Chron. 8 H. 6. 371. between John Upton and John Down. Vide Stowes Survey of London 385. See this case. Rot. Pat. 8 H. 6. parte 2. m. 7. Annals 609. Stow. Ibid. Anno 25 H. 6. Anno domini 1446. between John Davye and William Catur his master, Annals 655. ibid. 386. battell joyned between Thomas Fitz-thomas Prior of Kilman and James Butler Earl of Ormond; but when it came to the point the King forbad it. Vide Rot. Parl. 2 H. 6. nu. 9. John Lord Talbot Lieutenant of Ireland accused the Earl of Ormond of High Treason before the Earl of Bedford Constable of England in his Marshals Court, the King did abolish the accusation.

What judgement shall be given when either party is vanquished, see the Articles of the Duke of Glouc' Constable of England about the beginning of the reign of R. 2. The law of arms is, that the Appellant being overcome shall incurre the same punishment, that the Defendant ought to have done if he had vanquished.

See an ancient Manuscript in French entituled Modus faciend' Duellum coram Rege. Bone foy & droit & ley de Arms voet, quel appellant encourge mesme peyne que le defendant deveroit, sil soit convict & discomfit.* And this seemeth to be consonant to the law of God.

This Manuscript treateth both of the jurisdiction and manner of the proceeding before the Constable and Marshall, and for that it is long, and I doubt not but copies thereof are in many hands, I have not inserted it here.

There are many in forain parts that have written of Combats, &c. in Latine, French, and Italian. As Alciat, Lancelotus, Conradus, Johannes de Lignano, Mutio Justino Politano, Berandler, Beutheus, Desdigueres, &c. to whom we refer the reader, for that it is safe to follow the Acts of Parliament concerning the jurisdiction of this Court, and such presidents as have been before the Constable and Marshall in the Marshals Court within this Realm.

¶ Out of the Realm.] This is to be understood in any forain part beyond the Seas, In partibus exteris & transmarinis. For upon the Sea the Admirall hath jurisdiction, which Admirall (our English Neptune) cannot meddle with any thing done beyond the Seas upon the Land, and the Constable and Marshall have no conusance of any thing done upon the Sea.

26 H. 8. cap. 13. 35 H. 8. cap. 2. 5 E. 6. c. p. 11.

Where by these Acts it is provided, That all treasons, misprision of treasons, or concealment of treasons committed out of this Realm of England, should be inquired of, heard and determined in the Kings Bench by good and lawfull men of the same Shire, where the said Bench shall sit, or else before such Commissioners and in such Shire, as should be assigned by the Kings Commission, by good and lawfull men of the same shire, in like manner and form to all intents and purposes as if such treasons, &c. had been done within the same, &c. None of these Acts doth take away the jurisdiction of the Constable and Marshall, where one accuseth another of High treason done out of the Realm: for of such an accusation of one against another of any High treason done out of the Realm the Constable and Marshall should have conusance thereof: because High treason is not triable by Jury according to the course of the Common laws of the Realm in that case for want of proof, as by all the presidents aforesaid it appeareth. Neither doth the said Act of 35 H. 8. or 5 E. 6. take away the statute of 28 H. 8. cap. 15. for tryall of treasons done upon the Sea albeit they be done out of the Realm. See hereafter Cap. 23. and the Third part of the Institutes, Cap. of Piracy, pa. 111, & 112. and there was no doubt conceived of the triall of them. See the preamble of the statute of 35 H. 8. and of 5 E. 6.

See 1 E. 6. ca. 12. & 5 E. 6. ca. 11. in the 3. part of the Inst. pa. 24.

See 5 El. ca. 5.

If any Merchant English be spoiled, or his goods taken from him beyond Sea by any Merchants strangers, and the English Merchant cannot upon suit attain

* Vid. Regi. 129. F. N. B. 114 b. Note remedy by the Common law for wrong done beyond the Sea.

a Deut. 19. 18. And the judges shall make diligent inquisition, and if the accuser be found false, and that he hath given false witnesse against his brother, then shall you doe to him as he had thought to doe to his brother, and thou shalt put evill away from the middest of thee.

attain to juſtice there, he ſhall have upon teſtimony thereof a writ out of the Chancery to arreſt the Merchants ſtrangers if they come into England, or their goods, &c. untill they be ſatisfied. See hereafter the Chapter of Admiralty.

Before this Act at a Parliament holden in the 8 year of R. 2. It was enacted, that no plea which ſhould concern the Common law ſhould be tried before the Conſtable and the Marſhall. Rot. Par. 8 R. 2. nu. 31. not printed.

No addition either of perſons or of jurisdiction can be added to this Court, unleſſe it be by Act of Parliament, * for ancient Courts ought to be exerciſed according to the ancient and right inſtitution. Rot. Par. 5 R. 2. nu. 29. Bennet Wilmots caſe. 6 H. 7. 5. Simile * Regul. 6 H. 4. 5.

In the Appeal aforeſaid between Upton and Down in 8 H. 6. after battell joyned, the Kings writ out of the Court of Chancery iſſued to the Sheriffs of London, as we find it entred and recorded in the great book of the Abby of Bury fo. 87. as followeth.

Rex Vic' London Salutem: Præcipimus vobis firmiter injungentes quod quasdam liſtas & barras de meremio fortes & ſatis ſufficientes pro quodam Duello inter Johannem Upton Appellantem & Johannem Down Defendentem, ſecundum legem Armorum die Lunæ prox' futur' apud Weſt-ſmithfield in ſuburb' Civitatis prædicta Deo dante perficiend' contra diem prædictum noſtris ſumptibus & expenſis erigi, conſtrui, & fieri fac' in omnibus prout in ultimo duello ibidem facto fact' fuerunt, & quod terra infra liſtas prædict' cum ſabulo ſufficiente & equalit' cooperiatur, Ita quod aliqui lapides grandes aut arena infra eaſdem liſtas minime inveniantur quoviſmodo: Et de omnibus & ſingulis pecuniarum ſummis quas circa præmiſſa applicaveritis, nos vobis in compoto veſtro ad Scaccarium noſtrum per præſens mandatum noſtrum, debitam allocationem habere faciemus, &c. Breve Vic' London pro liſtis & barris, &c. pro duello fac'. Lex Armorum. Pro duello, &c. See the Articles ſet down by Tho. of Woodſtock Duke of Glouc' Conſtable of England, about the beginning of the reign of R. 2.

By this writ we obſerve 4. things. 1. That Sheriffes ought to make the liſts, &c. 2. The manner how they are to make them. 3. That they ought to make them by the Kings writ. 4. That they are to be made at the Kings charges. See mod' fac' duellum coram rege.

By the ſtatute of 1 H. 4. all Appeals of things done within the Realme ſhall be tried and determined by the good lawes of the Realm, &c. And that all Appeals made of things done out of the Realm ſhall be tried and determined before the Conſtable and Marſhall of England for the time being, and that no Appeal be purſued in Parliament. 1 H. 4. cap. 14. Rot. Par. 11 H. 4. nu. 24.

They proceed according [a] to the cuſtomes and uſages of that Court, and in caſes omitted, according [*] to the Civil law, ſecundum legem Armorum. And therefore upon Attainders before the Conſtable and Marſhall of England for the time being, no land is forfeited, or corruption of blood wrought. [a] 13 H. 4. fo. 4, 5. ¶ *By the Civil law, &c.* [*] 37 H. 6. fo. 3. Forteſc' cap. 32. fo. 38.

For Records, Book-caſes, and other Authorities in law as well for the expoſition of the ſaid Statutes, as for the jurisdiction and proceedings of this Court, [b] ſee the First part of the Inſtitutes, Sect. 102 and 745. and peruſe the Authorities there cited. See alſo the petition of Right, 3 Car. cap. 1. [b] 11 H. 4. nu. 24. All ſtatutes made touching the Courts of the Conſtable and Marſhall and Admiral of England ſhall be obſerved. Vide Rot. Parl. 5 H. 4. nu. 24. An Act not in print touching

It is to be obſerved that after ſentence pronounced in this Court of Chivalry in caſe of Armes the party grieved may appeal to the King, whereof you may read a notable Record, Rot. Par. 13 R. 2. parte 3. Note alſo a ſpeciall Roll, An. 14 R. 2. intituled Rot. proceſs' in curia militari in cauſa Armorum, Int' Ric' le Scroop Chivalier, & Robertum Grovener Chivalier.

And for this cauſe (amongſt others) [c] the Heralds are Attendants upon this Court. Of theſe Heralds there be tres Reges, *viz.* Garter Rex Armorum, Cla-

1 Commiſſion for arraying and muſtering of men, which at this day is of force, and no other. Vide 8 H. 4. nu. 12. Clergy exempt out of that. See alſo 14 E. 3. ſtat. 2. nu. 53. 2 Commiſſion of Lieutenancy. See hereafter amongſt the Eccleſiaſticall Courts, Tit. Appeals. Vid. Glover 82, 83. [*] Saxonice *Ernbeld*, i. honorem tenens, Latine feciales, 5 E. 4. 6. b. Pl. Com. 12. b.

renceux Rex Armorum ex parte Auſtrali, Norroy Rex Armorum ex parte Boreali, & ſex alii Heraldi. These English Heralds are meſſengers of war and peace, skilfull in deſcents, pedegrees, and Armories; they marſhall the ſolemnities at Coronations, they manage combats before the Conſtable and Marſhall, and upon requeſt they ſolemnize the Funerals of noble, honourable, reverend, and worſhipfull Perſonages. [a] They were firſt incorporated by King R. 3. and afterwards newly incorporated by King Philip and Queen Mary. Their learning and faithfull dealing in deſcents and pedegrees upon juſt proof may be a mean to quiet many controverſies about the titles of honors, dignities, and inheritances.

[a] Rot. Par. 1 R. 3. Rot. Pat. 2 & 3 Ph. & Mar. 18 July: Their Colledge is in the Pariſh of S. Bennet in Caſtle Bainard Ward granted to the corporation of the Heralds by Letters Patents bearing date 18 July 1555. Anno 2 & 3 Ph. & Mar.

[b] **In the Prophet** Ezechiel it is thus written: Dicit dominus deus, & erit manus mea ſuper Prophetas, qui vident vana, et divinant mendacium: in concilio populi mei non erunt, & in ſcriptura domus Iſrael non ſcribentur.

Upon theſe latter words Divines doe hold, Quod mos erat in Iſrael, quod unaquæque familia genealogiam ejus ſcriberet, in qua dignoſcebatur quilibet de qua tribu erat, & de qua familia, & quæ hæreditas ejus eſſe deberet, & ille qui penitus deſtrueretur non ſcriberetur.

[b] Ezek. 13. 8, 9. Pſalm. 69. *deleantur de libro viventium, et cum juſtis non ſcribantur.* 1 Eſdr. ca. 2. 62. *Hi quæſierunt ſcripturam genealogiæ ſuæ & non inveneruntur, & ejecti ſunt.*

[c] These Heralds are diſcharged of Subſidies, Tols, and other charges of the Commonwealth, by Letters Patents of E. 6. Anno 3. of his reign.

See the Firſt part of the Inſtitutes for degrees, and creations of Nobility, and triall thereof, Sect. 9. fo. 16. & Sect. 95. fo. 69. whereunto you may adde a notable writ in [d] the Regiſter, when a Baron or any higher degree of Nobility is ſued in the * Court of Common pleas, and proceſſe awarded againſt him by Capias or Exigent, then may he ſue out this writ.

[d] Regiſt. 287. b. F.N.B. 247. c.

* Or in the Kings Bench or other Court.

Rex Juſticiariis ſuis de Banco Salutem. Mandamus vobis, quod ſi G. T. miles coram vobis ad ſectam alicujus per actionem perſonalem implacitatus exiſtit, talem proceſſum & non alium verſus ipſum in actione predicta fieri faciatis, qual' verſus dominos, magnates, Comites ſive Barones regni noſtri Angliæ qui ad Parliamentum noſtrum de ſommonitione noſtra venire debent aut eorum aliquem ſecundum legem & conſuetudinem regni noſtri Angliæ fuerit faciend', quia predict' G. T. unum Baronum regni noſtri predict' ad Parliamenta noſtra de ſommonitione regia venientium recordari, &c.

Nota, *pro Barone.* Vid. 8 H. 6. 9, 10. 14 H. 6. 2. Lib. 6. fo. 53. b. le Countes de Rutlands caſe.

The Barony of Edmond de Eincourt commonly Deincourt of Langley in Lincolnſhire originally created by writ, had long continued in his Sirname, and having no iſſue male, deſirous that his Sirname, Arms, and Barony, all which he held in fee ſimple might continue, by humble ſuit importuned King E. 2. for that he conceived, Quod cognomen ſuum & arma poſt mortem ſuam delerentur, & corditer affectabat ut poſt mortem ejus in memoria haberentur, ut de maneriis & armis ſuis feoffaret quemcunque voluerit: and in the end he obtained his ſuit by the Kings Letters Patents under the Great Seal, and afterwards about 19 E. 2. he aſſigned according to the Kings grant his Sirname, arms, and poſſeſſions. For we find in the cloſe Rols that the ſaid Edmond Baron of Eincourt ſat in Parliament untill and in 18 E. 2. and that after his deceaſe his aſſignee ſat in Parliament in 1 E. 3. by the name of William de Eincourt, and in his heirs males the dignity, ſirname and poſſeſſions continued * untill 21 H. 6. and then his heir male together with the name and dignity ceaſed.

10 E. 2. Camden Brit. Rot. Carr. 23 H. 3. nu. 32. 34. Almarick Earl of Leic'. Matth. Par. pag. 647.

* Inquiſit' 21 H. 6. Poſt mortem Willielmi domini de Eincourt.

And I did heare the Baron of Burghley Lord Treaſurer Deputy to the Earl of Shrewſbury then Earl Marſhall of England, in hearing of the cauſe by the Queens commandment between Edward Nevil and Lady Mary Vane daughter and heir of Henry Lord of Aburgavenny for the right of the Barony of Aburgavenny, vouch a record in the reign of E. 4. That the Lord Hoe, who bare for his enſigns of honor quarterly Silver and Sable, having no iſſue male, by his deed

Hil. anno 31 El.

deed under his ſeal granted his name, arms and dignity over, but having not the Kings licenſe and warrant, the ſame was in Parliament adjudged to be void.

Our Heralds are conſtituted by Letters Patents, and have many ceremonies done unto them at their creation, but thoſe ceremonies are not of the eſſence of their office, but the Letters Patents onely: and ſo was it adjudged in the Kings Bench in the reign of Queen Eliz. in the caſe of Dethick King of Arms. But thus much of Heralds upon this occaſion ſhall ſuffice; and now let us return to our Conſtable and Marſhall.

In ancient laws before the Conqueſt, you ſhall read De Heretochiis or Heretogiis, *i.* ductoribus exercitus, ab heſe exercitus & *toecu* ducere.

Heretochius agreeth with either of theſe great Officers, Conſtabularius or Mariſchallus: Iſti vero eligebantur per commune concilium pro comuni utilitate regni per provincias & patricos in pleno Folkmote.

Int'leges Edwardi regis. Lamb. 136. Hovenden Annal. Cap. 35. De Heretochiis. Of ancient time eligible. Lambard ubi ſup. Hovend. ubi ſup.

This office of the Conſtable of England was afterwards of inheritance by the tenure of the Manors of Harlefield, Newman, and Whitenhurſt by Grand Serjeanty, in the line of the Bohuns Earls of Hereford and Eſſex, and afterwards of right in the line of the Staffords and Dukes of Buckingham as heirs generall to them: at the laſt by the opinion of * all the Judges it was lawfully deſcended to Edward Duke of Buckingham, who was attainted of treaſon, in Anno 13 H. 8. whereby this office became forfeited to the Crown, and ſince that time both in reſpect of the amplitude of the Authority both in war and peace, and of the charge, it was never granted to any ſubject, but now of late hac vice.

* See 11 El. Dier 285. ſo reſolved in 6 H. 8.

For the office of the Earl Marſhall, ſee the Firſt part of the Inſtitutes, Sect. 102. & 135.

The effect of the grant of this Office of Conſtable of England is in very few words, viz. Officium Conſtabularii Angliæ una cum omnibus feodis, proficuis, commoditatibus, & emolumentis quibuſcunque officio prædicto qualitercunque pertinentibus, & ab antiquo debitis & conſuetis. And by no means we are to follow the irregular preſident of the grant thereof by King E. 4. in the 7 year of his reign to Richard Widevile Earl Rivers and Lord of Grafton and De la mote for his life: which Patent you ſhall find Rot. Pat. Anno 7 E. 4. part. 1. and is directly againſt the Common law and the ſtatutes concerning the juriſdiction of this Office; and therein to over-reach all the good and wholeſome lawes made for the declaration of the juriſdiction of this great Office, power was given to the Earl Rivers to have cenuſance in caſe of High treaſon, and other cauſes and affairs, Quæ in Curia Conſtabularii Angliæ ab antiquo, *viz.* domini Guilielmi Conqueſtoris progenitoris regis, ſeu aliquo tempore citra, tractari, audiri, examinari & decidi conſueverunt, ſeu de jure debuerunt ſive debent, & diverſa alia perperam. And therefore by no meanes the ſame or the like is to be drawn into example.

For grants of this great Office of Conſtable of England, ſee the preſidents, and by that which hath been ſaid chooſe the beſt. Rot. Pat. 1 H. 4. parte 1. Henrico comiti North. pro vita. Rot. Pat. 4 H. 4. parte 2. Johanni filio regis, ad placitum. Rot. Patl. 1 H. 6. nu. 23. Duci Glouc' ad placitum. Rot. Pat. 1 H. 6. parte 2. Johanni Duci Bedford pro vita. Rot. Pat. 8 H. 6. parte 1. Richardo Duci Eborum in abſentia Johannis Ducis Bedford. Rot. Pat. 25 H. 6. parte 1. Johanni Vicecom' de bello monte. Rot. Pat. 28 H. 6. parte 2. m. 22. Henrico Com' Northumbr. ad placitum. Rot. Pat. 29 H. 6. parte 1. Edmundo Duci Somerſet. ad placitum. Rot. Pat. 1 E. 4. parte 3. m. 188. Johanni Com. Wigorn'. Rot. Pat. 7 E. 4. parte 1. Johanni domino Tiptoft. Rot. Pat. 7 E. 4. Ubi ſupra Richardo Com' Rivers. Pat. 8 E. 4. parte 1. Pat. 9 E. 4. Georgio Duci Clarenc'. Pat. 9 E. 4. parte 2. Richardo Duci Gloc'. Pat. 10 E. 4. parte * Johanni Tiptoft Comiti Wigorn. pro vita. Pat. 16 E. 4. parte 1. Richardo Duci Eborum. Henricus Stafford Dux Buckingham jure hæreditario. Pat. 1 R. 2. Thomas dominus Stanley. Edwardus dux Buck' jure hæreditario.

Hic omnium immaniſſimus: but the debts of cruelty are never unpaid, *reſpice finem.*

This great office hath been usually granted, as by the presidents aforesaid appeareth, Exercendum per se vel per sufficientes deputatos suos, seu per sufficiẽ deputatum suum.

There is also an Office of Subconstabularius granted to Thomas Kent Doctor of lawes. Pat.23 H.6. parte 2. Simile Pat.22 E.4.m.1.

There is also Clericus Constabulariæ Angliæ, & Promotor causarum & negotiorum regiam majestatem tangen'. This Office was granted to Thomas Appulton with a fee of Five marks, Pat.8 E.4.parte 1.

Concerning the grants of the Office of Earl Marshall of England: for this Office ever passed by the grants of the King, and never belonged to any Subject by reason of tenure, as the Stewardship, and Constableship of England sometime did.

Rot.Cart.20 R.2, m.1.n.3. Rex, &c. Sciatis quòd cum nos nuper de gratia nostra speciali concesserimus dilecto consanguineo nostro Thomæ Comiti Notingham Officium Mareschalli Angliæ, habendum ad totam vitam suam: Nos jam de ulteriori gratia nostra concessimus præfato consanguineo nostro officium prædictum * *una cum nomine & honore Comitis Mareschalli.* Habendum sibi & hæredibus suis masculis de corpore suo exeuntibus cum omnibus feodis, proficuis & pertinentiis quibuscunque dicto officio qualitercunque spectantibus imperpetuum. Hiis testibus, &c. Dat 12 Junii Anno regni sui 20. This Charter of creation is confirmed by Act of Parliament. The former grant before recited, yet shorter then this, was made anno 9 R.2.

* This is the first stile that ever came in any Patent.

Rot.Cart.9 R.2. nu.17.

For other grants of this Office in Rot.Cartarum, Pat. & Parl. See Rot.Cart. 1 Johannis parte 2.nu.85. Rot.Cart.9 E.2.nu.32.

Vide Rot.Pat.
- 1 H.3.m.14.16.
- 22 R.2.parte 1.m.12.
- 1 H.4.parte 1.& 5.m.6.
- 1 R.3.parte 1.m.12.
- 1 H.7.parte 3.
- 2 H.8.parte 2.
- 25 H.8.parte 2.
- 1 E.6. parte 1.m. 19.& 22.
- 19 Ja.parte 13.nu.5.

Vid. Rot.Parl.
- 3 H.6.m.18.
- 1 Mariæ nu.34.
- 1 R.2.m.4.& 3.
- 20 R.2.nu.33.
- Parl.21 E. 1. Rot.1 Quæ pertinent ad officium Comitis Mareschalli, &c.

Pat.22 E.4.m.2. There was also Vicemareschallus, which office was granted to Tho: Grey hac vice.

Vid. Lib.nigr' de Scaccario, concerning the offices of the Constable and Marshall, & Lib.rubro fo.36.

See also the Marshall of England, Fleta lib.2. cap.4,5. and Britton in principio libri.

See Mich.13 E.2.in Scaccario pro feodis Constabularii Angliæ.

Hil. 5 E. 3. in Scaccario Certificatio fact' Regi pro officio Mareschalli. 1 E.3. fo.16. 2 E.3.fo.12. 48 E.3.3. Rot.Parl.2 R.2.nu.47. 5 R.2. Tit. Triall 54. Rot. Par. 5 H.4.nu.39. Kelwey 172. Stanf.Pl.Cor.65. Forteſcue Ca.32.fo.38. 5 Mar. Br.tit.battell 15.

Hereslita signifieth a Soldier hired and departing without license, derived of *Here*, exercitus, & *sliten*, to depart.

Regist.fo.191.2. & Par.5 E.3. nu.18. If any Soldier have covenanted to serve the King in his war, and appears not at the time and place appointed, there lyeth by the Common law an originall writ of Capias conductos ad proficiscendum, directed to two of the Knights Serjeants

Serjeants at Arms to arreſt and take him whereſoever he may be found, and to bring him Coram concilio noſtro with a clauſe of aſſiſtance: but of this matter ſee the Third part of the Inſtitutes, Cap. [Soldiers that depart, &c.] See 3 Car. the petition of Right concerning Martiall law, and the Commiſſion to Lieutenants, &c.

To conclude with ſome ſhort touch concerning right of war. Si quando acceſſeris ad expugnandam civitatem, offeres ei primum pacem: and ſee there many things concerning right of war. Quis rex iturus committere bellum adverſus alium regum, non ſedens prius cogitat ſi poſſit cum decem millibus occurrere ei qui cum viginti millibus venit ad ſe, alioquin illo adhuc longe agente legationem mittens rogat ea que pacis ſunt. Deut. 20. 10. &c. Luc. 14. 31.

Haud facile vincitur qui de ſuis & adverſarii copiis vere poterit judicare. *Tacitus.*
Qui colloquium offert, ſemper paveſcit, he that offereth parly is ever afraid. *Vegetius de re militari.*
Nulla ſunt meliora conſilia quam quæ ignoraverit adverſarius antequam facias. *Cicero Offic'.*

Nullum bellum eſt juſtum, niſi aut pro rebus petitis geratur, aut ante denunciatum ſit, & indictum.

Jure gentium non licet indictas inimicitias exercere & bellum gerere, priuſquam ille à quo injuria fit orſa moneatur illicitam injuriam reſarcire, & ab injuria abſiſtere. *Camden.*

Juſtum autem bellum eſt quod tria hæc habet, Authorem, Cauſam, Finem. *Lipſius.*
Semper in prælio hiis maximum periculum, qui maxime timent. *Saluſt.*
Longa belli præparatio celerem dat victoriam. *Veget. & Seneca.*
Ideo ſuſcipienda ſunt bella, ut ſine injuria in pace vivatur.
In republica maxime conſervanda ſunt jura belli. *Cicero ubi ſup.*
* Olim veteri lege armorum cives & burgenſes militiam tractare prohibiti fuerunt. *Ariſt. 10.* *Vid. 24 E. 3. Tit. Coron.

We touch Vegetius for his own honor, and worthineſſe, and for that Forteſcue fo. 70. b. citeth him.

CAP.

CAP. XVIII.

The Court of the Marſhalſea.

¶ *The name.* 1 part of the Inſtitutes, §. 102. & 135.

For the derivation of Mareſchallus & Mareſchalcia, ſee before in the next preceding Chapter of the Court of the Conſtable and Marſhall, that they be derived from two Saxon words which we conceive tendeth much for the proof of the antiquity and honour of our Nation, ſeeing other Nations have the ſame Officers and Offices; and in reſpect their name is derived from the language of our Anceſtors, it is like they tooke the ſame from us.

¶ *The Antiquity & honor.* 4 H.6.8. L 5 E. 4. 229.

Albeit in this Court the Steward and Marſhall of the houſhold are Judges, and the Steward hath the precedency, yet the Court is called the Court of Marſhalſea for three cauſes. Firſt, he is not onely a Judge, but ſeeth that execution (which is the life of the law) be done. Secondly, his office is in force both in time of peace, and in time of war. Thirdly, though the Conſtable hath the precedency of the Marſhall of England, yet the Court holden before them is called the Marſhall Court, for the cauſes aforeſaid. See before in the Chapter of the Conſtable and Marſhall, ſee alſo Rot. Par. anno 8 H.4. nu. 82. that the Court of the Marſhall can hold no plea but ſuch as were holden in the reign of E.1.

¶ *Wherefore it is called the Court of the Marſhalſea.*

¶ *The Juriſdiction of this Court is original and ordinary.* 4 H.6.1. Hil.20 R.2. Corã Rege Rot.58. Midd.

For the juriſdiction of this Court, and within what precinct, ſee in my Reports, Lib.10. fo.68,69. &c. Le caſe del Maſhalſea. Lib.6.fo.20,21. Michelbornes caſe. 7 H.4.15. in Calvins caſe. Lib. 4. fo. 46, 47. Swifts caſe. See Parl. 30 E.1. Rot. 2. All inquiſitions concerning any Citizen of London ſhall be taken in London.

Pertinet ad Mareſchallum Cur' hic venire fac' juratores ſuper felones captos cum manuopere in Aula regis.

This Court hath his foundation from the Common law of England.

W.1.ca.26.fees.

This Marſhall by the ſtatute of W.1. can take no fee for doing of his office, but only of the King, but ſuch fees as latter Acts of Parliament have given him, he may take. See the Third part of the Inſtitutes, Cap. Extortion.

For the fees of the Marſhall of the Kings houſe, and of ſtaffe bearers, and ſervitors of his, ſee the ſtatute of 2 H.4 Cap.23.

Rot.Par.17 E.3. nu.31.

To conclude this Chapter with an Act of Parliament not in print. It is enacted that every perſon arreſted into the Marſhalſea, may tell his own tale, and that the Officers doe not paſſe the Verge. See Par.50 E.3.nu.91.162.

CAP.

CAP. XIX.

The Counting-houſe of the Kings Houſhold.

Domus Compotus Hoſpitii Regis.

IT is commonly called the Greencloth, in reſpect of the Green cloth upon the Table, whereat the honourable Officers hereafter mentioned doe ſit, viz. the Lord Steward, the Treaſurer of the Kings Houſe, the Controller of the Kings houſe, the Maſter of the Houſhold, the Cofferer, and two Clerks Controllers continually ſitting in this Counting-houſe for theſe purpoſes. Firſt, for daily taking the accounts for all expences of the ſaid houſhold. Secondly, for making of proviſions for the ſaid houſhold, according to the Laws and Statutes of the Realme. Thirdly, for making of payment for the ſame accordingly. Fourthly, for the good government of the Kings ſervants of houſhold. Fifthly, the Cofferer is to pay the wages to the Kings ſervants beneath the ſtaires, and the Lord Chamberlaine above the ſtaires of the Kings houſhold. Vide 39 Eliz. cap. 7. and he is to account in the Exchequer for about 40000 li. 33 H. 8. cap. 12.

See Fleta de officio Theſaurarii Hoſpitii regis, &c. Habet enim Rex alios clericos in hoſpitio ſuo, ut Theſaurar' Garderobæ ſuæ quæ eſt locus Clericis tantum aſſignatus, quæ in Francia Camera Clericorum appellatur. Huic enim Theſaurario cur' expens' Regis & familiæ ſuæ committit', q̄ cum Clerico provido ſibi aſſociato pro Controllatore recordum habet ut in his q̄ officium ſuum contingunt. Fleta lib. 2. ca. 13. Theſaurarius Garderobæ.

¶ Officium Theſ. Garderobæ eſt pecuniam, jocalia exemñia regi facta recipere & recepta regiſque ſecreta cuſtodire, & de receptis expens' facere rationabiles, expenſarúmque particulas inbreviare, & de particulis comp' reddere ad Scaccarium ſingulis annis in feſto Sanctæ Margaretæ abſque ſacro præſtando, eo quod de conſilio regis eſt juratus, Et unde primo debet diſtinctè & apertè comp̄ reddere de omnibus recept' ſeparatim per ſe in uno rotulo. In alio autem rotulo de expenſis quotidianis de quibus Sen̄ audiverit comp̄, ſimul cum Theſ. & conſocio ſuo. Item de neceſſariis expenſ. in quibus emptiones equorum, cariagia & plura alia continen't. Item de donis, Item de oblationibus & eleemoſynis. Item de vadiis militum. Item de vadiis baliſtar'. Item de feod' forinſecis. Item de præſtit' & accomodat'. Compotum reddere. De conſilio regis juratus Modus componi.

¶ Item de expenſ. Garderobæ in quib' emptiones pañorum, pelure, cere, ſpērū tele, & hujuſmodi comprehenduntur. Item de jocalibus. Item de expenſ. forinſecis, in quibus diverſi onerant' in compot' reddend'. Item de Nunciis. Item de Falconar'.

¶ Theſ. autem memoratus convenire debet ſingulis noctibus Sen̄ hoſpitii, Camerar' Controllatorem & clericum ejus, Coffrarium, Mar' aulæ & hoſtiar' milites, Mar' ſervientē & duos hoſtiar' aulæ & hoſtiar' cameræ ſervientes, aſſeſſorem ferculorum, pincernam, panetr' piſtorem & clericum eorundem officiorum, q̄ de expenſ. dietæ, *viz.* panis, vini, & cerviſ. pichiorum, ciphorum, ſalis, fructus, caſei & hujuſmodi reſpondebit. Convenire ſingulis noctibus. Coffrarius.

¶ Item duos magiſtros Cocorum, lardenar', poletar', ſcutelar', ſalſar', & clericum coquinæ qui de eiſdem officiis pro omnibus in eorum præſentia de expenſ. illius dietæ reddit rationem, quorum omnium præſentia neceſſaria eſt. Item Eleemoſynar', janitor' ſervientem ad cuſtodiam ſummar' & carectarum deputatum & clericum de Mareſcalcia cum Mareſcall' fractore equorum, qui quidem clericus de expenſ. ſeni & avēn litere fracture equorū & harneſie pro equis & carectis ac de vadiis ſervient' ſcutiferarum clericorum & gare' reſpondebit, cuj' intereſt ſcire tam de hiis qui de novo erunt admiſſi ad vad' Regis, quam de vagantibus & in hiis vadia minuere & augere. Vadia autem abſentibus ſine ſpeciali præcepto regis niſi obſequio reg' fuerint minime concedunt', præſentia autem Coronatoris Magiſtri Cocorū, Clericus Coquinæ.

Regis

Regis neceſſario erit in pleno compoto, compoti auditores ſuper foro frumenti & aven inſtruet & edocet qualit proclamat in eiſdem partibus per quod melius ſcire poſſint quot panes obolati fieri debent de quart frument, quibus omnibus congregatis audire debet expenſ. & rationabilem compot illius dietæ.

¶ Mareſchalli autem de ſupervenientibus debent inferiori Mar teſtimonium perhibere. Hoſtiarius miles hoſtiariis aliis de numero ſerculorum lardenar, coco, camerar, hoſtiario camer Regis, & ſic quibus alii, & ſic audiat compotus de tota dieta.

And then followeth a deſcription of the duties of the ſeverall officers abovelaid, worthy the reading.

The Cofferer is in Fleta called Coffrarius of the Coffer: becauſe he ſhould have money in his Coffer to pay wages, &c. as is aforelaid. It is enacted by the ſtatute of 28 E.1.cap.2. That all Purveyors ſhall account in the * houſhold, or in the Wardrobe. Rot. Par. 28 E.3. nu.34. no Purveyor arreſted ſhall be brought before the Councell, &c. but take his remedy by the Common law. See the Third part of the Inſtitutes, cap. Purveyours.

Artic' ſup. Cart. cap.2.

* Countinghouſe having the Greencloth.

Rot.Parl.28 E.3. nu.34.

* See the ſtatutes concerning Purveyours, Anno 36 E.3.cap.2,3,4,5,6, &c. But obſerve that there is left out of the print the pain on the Steward, Treaſurer, Controller, and other Officers of the houſhold at the Kings will, for not executing the ſtatute: which omiſſion hath made thoſe of the Greencloth the bolder.

* 36 E.3.ca.2,3, 4. &c.

Rot.Par.36 E.3. nu.18.

At that Parliament it was alſo enacted, that the Kings carriages ſhould be made in as eaſie manner as might be, and that in the Summer, and other times convenient, as in Auguſt (which is alſo left out of the print.) For the Kings Carriages ſee Mag.Cart.cap. 21. and the expoſition upon the ſame in the Second part of the Inſtitutes.

For the Wardrobe, Vide 15 E.2, Rot. per ſe. 1 E.4.ca.1. Clerk of the Wardrobe, Rot. Parl. 7 H.7. the expences of the Kings houſhold and Wardrobe: 1 H.8. an Act concerning the great Wardrobe. 3 H.8. the aſſignment for the Kings Wardrobe. 39 Eliz. cap.7. Maſter of the Wardrobe, whoſe office is accountable in the Exchequer. See W. 1, cap. 44. what iſſues the Kings Juſtices are to eſtreat into the Wardrobe: more of the Wardrobe, Rot.Clauſ.33 E.1.m.3. Rot. liberationum, 11 E. 2. m. 4. To conclude, See Rot. Clauſ. 18 E.4. m.13. where it appeareth that Letters and Writings concerning matters of State, which were not fit to be made vulgar, were inrolled in the Wardrobe, and not in the Chancery, as leagues were and ought to be, as it appeareth in 19 E.4.6. And thus much of the Wardrobe being mentioned in Fleta.

Vid.infra cap.26.

The Officers of the Counting-house never held plea of any thing.

CAP.

CAP. XX.

The Court of the Lord Steward, Treaſurer, and Controller of the Kings houſhold, concerning felony by compaſſing or conſpiracy to kill the King, or any Lord or other of the Kings Councell, &c.

They have jurisdiction by Act of Parliament, to enquire, heare, and determine the ſaid offence, as particularly and at large appeareth in the Third part of the Inſtitutes, cap. Felony, by compaſſing, or conſpiracy to kill the King, &c.

3 H.7.cap.14.
3 part of the Inſtitutes cap. Felony by compaſſing or conſpiracy to kill the King fol. 67.

CAP. XXI.

The Court of the Lord Steward of the Kings houſe, or in his abſence of the Treaſurer, and Controller of the Kings houſe, and Steward of the Marſhalſea.

They have jurisdiction by Act of Parliament to enquire of, hear, and determine all Treaſons, Miſpriſion of treaſons, Murders, Manſlaughters, Bloodſhed, and other maliticus ſtrikings, whereby blood ſhall be ſhed in any of the Palaces and houſes of the King, or in any other houſe where the King in his Royall Perſon ſhall be abiding. And by that Act the * limits and bounds of the Kings Palaces or houſes, or the houſe where the Royall Perſon is abiding, are particularly and expreſſly ſet forth and deſcribed. In this and like caſes we refer you to the ſtatute it ſelfe, for Compendia ſunt diſpendia.

33 H.8.cap.12. See the ſtatute for the triall and manner of proceeding. Raſtall pl.124. See the third part of the Inſtitutes, cap. Miſpriſion. fol.229.
* Vide 28. cl.12.

T CAP.

CAP. XXII.

The Court of the Admiralty proceeding according to the Civill Law.

Articuli Admiralitatis.

Articuli Admiralitatis. The Articles of the Admiralty.

The complaint of the Lord Admirall of England to the Kings moſt Excellent Majeſty againſt the Judges of the Realme, concerning Prohibitions granted to the Court of the Admiralty 11 *die Febr. penultimo die termini Hilarii, Anno* 8 *Jac. Regis:* The effect of which complaint was after by his Majeſties commandement ſet downe in Articles by Doctor *Dun* Judge of the Admiralty; which are as followeth, with anſwers to the ſame by the Judges of the Realme: which they afterwards confirmed by three kindes of authorities in law. 1. By Acts of Parliament. 2. By Judgements and judiciall proceedings: and laſtly, by Book caſes.

¶ The Proces and proceedings in this Court are in the name of the Lord Admirall.

The Title of the Complaint. Certaine grievances whereof the Lord Admirall and his Officers of the Admiralty do eſpecially complain, and deſire redreſſe.

1 *Objection.* That whereas the conuſance of all contracts and other things done upon the Sea belongeth to the Admirall Iuriſdiction, the ſame are made triable at the Common Law, by ſuppoſing the ſame to haue been done in Cheapſide, and ſuch places.

The Anſwer. By the lawes of this Realm the Court of the Admirall hath no conuſance, power, or iuriſdiction of any matters of contract, plea, or querele within any County of the Realm, either upon the land or the water: but euery ſuch contract, plea, or querele, and all other things riſing within any County of the Realm, either upon the land or the water, and alſo Wreck of the Sea ought to be tried, determined, diſcuſſed, and remedied by the lawes of the land, and not before, or by the Admirall nor his Lieutenant in any manner. So as it is not materiall whether the place be upon the water infra fluxum & refluxum aquæ: but whether it be upon any water within any County. Wherefore we acknowledge that of contracts, pleas, and querels made upon the ſea, or any part thereof which is not within any County (from whence no triall can be had by twelue men) the Admirall hath, and ought to haue iuriſdiction. And no preſident can be ſhewed that any Prohibition hath been granted for any contract, plea, or querele concerning any marine cauſe made or done upon the ſea, taking that only to be the ſea wherein the Admirall hath iuriſdiction, which is before by law deſcribed to be out of any County. See more of this matter in the Anſwer to the firſt Article.

The deſcription and limitation of the (Sea) wherein the Lord Admirall hath iuriſdiction.

2 *Objection.* When Actions are brought in the Admiralty upon bargains and contracts made beyond the ſeas, wherein the Common law cannot adminiſter juſtice, yet in theſe caſes Prohibitions are awarded againſt the Admirall Court.

The anſwer. See hereafter in the proofs by Judgements and Judiciall preſidents.

Bargains or contracts made beyond the ſeas wherein the Common law cannot adminiſter juſtice (which is the effect of this Article) do belong to the Conſtable and Marſhall; for the iuriſdiction of the Admirall is wholly confined to the ſea, which is out of any County. But if any Indenture, Bond, or other Specialty, or any contract be made beyond ſea for doing of any act or payment of any money within this Realm, or otherwiſe, wherein the Common law can adminiſter

minister justice, and give ordinary remedy: In these cases neither the Constable and Marshall, nor the Court of the Admiralty hath any jurisdiction. And therefore when this Court of the Admiralty hath dealt therewith in derogation of the Common law, we finde that Prohibitions have been granted, as by law they ought.

Whereas time out of minde the Admirall Court hath used to take stipulations for appearance and performance of the Acts and Judgements of the same Court: It is now affirmed by the Judges of the Common law, that the Admirall Court is no Court of Record, and therefore not able to take such stipulations: and hereupon Prohibitions are granted to the utter overthrow of that jurisdiction. *3 Objection.*

The Court of the Admiralty proceeding by the Civill law is no Court of Record, and therefore cannot take any such Recognisance as a Court of Record may do. And for taking of Recognisances against the lawes of the Realme, we finde that Prohibitions have been granted, as by law they ought. And if an erroneous sentence be given in that Court, no Writ of Error, but an Appeale before certain Delegats do lye, as it appeareth by the statute of 8 Eliz. Reginæ, cap. 5. which proveth that it is no Court of Record. *The Answer.* 8 Eliz. cap. 5.

That Charter-parties made only to be performed upon the seas, are daily withdrawn from that Court by prohibitions. *4 Objection.*

If the Charter party be made within any City, Port Town, or County of this Realm, although it be to be performed either upon the seas, or beyond the seas, yet is the same to be tried and determined by the ordinary course of the Common law, and not in the Court of the Admiralty. And therefore when that Court hath incroched upon the Common law in that case, the Judge of the Admiralty and party suing there have been prohibited, and oftentimes the party condemned in great and grievous damages by the lawes of the Realm. *The Answer.*

That the Clause of Non obstante statuto, which hath foundation in his Majesties Prerogative, and is currant in all other grants, yet in the Lord Admirals Patent is said to be of no force to warrant the determination of the causes committed to him in his Lordships Patent, and so rejected by the Judges of the Common law. *5 Objection.*

Without all question the statutes of 13 R. 2. cap. 3, 15 R. 2. cap. 5. and 2 H. 4. cap. 11. being statutes declaring the jurisdiction of the Court of the Admirall, and wherein all the subjects of the Realm have interest, cannot be dispensed with by any Non obstante, and therefore not worthy of any answer: but by colour thereof, the Court of the Admiralty hath contrary to those Acts of Parliament incroched upon the jurisdiction of the Common law to the intolerable grievance of the subjects, which hath oftentimes urged them to complain in your Majesties Courts of ordinary Justice at Westm. for their relief in that behalf. *The Answer.* 13 R. 2. cap. 3. 15 R. 2. cap. 5. 2 H. 4. cap. 11.

To the end that the Admirall jurisdiction may receive all manner of impeachment and interruption, the Rivers beneath the first Bridges, where it ebbeth and floweth, and the Ports and Creeks are by the Judges of the Common law affirmed to be no part of the seas, nor within the Admirall jurisdiction: and thereupon Prohibitions are usually awarded upon actions depending in that Court, for Contracts and other things done in those places; notwithstanding that by use and practise time out of minde, the Admirall Court have had jurisdiction within such Ports, Creeks, and Rivers. *6 Objection.*

The like answer as to the first. And it is further added, that for the death of a man, and of mayhem (in those two cases only) done in great ships, being and hovering in the maine streame only beneath the points of the same Rivers nigh to the sea, and no other place of the same rivers, nor in other causes, but in those two only, the Admirall hath cognisance. But for all contracts, pleas, and querels made or done upon a river, Haven, or Creek, within any County of this Realm, the Admirall without question hath not any jurisdiction, for then he should hold plea of things done within the body of the County, which are triable by verdict of twelve men, and meerly determinable by the Common law, and not *The Answer.*

within the Court of the Admiralty according to the Civill law. For that were to change and alter the laws of the Realm in those cases, & make those contracts, pleas and querels triable by the Common laws of the Realm to be matter ad aliud examen, and to be sentenced by the Judge of the Admiralty according to the Civil laws. And how dangerous and penall it is for them to deal in these cases, it appeareth by judiciall presidents of former ages. See the answer to the first Article.

The 7. Object. That the agreement made in Anno domini 1575. between the Judges of the Kings Bench and the Court of the Admiralty for the more quiet and certain execution of Admirall jurisdiction, is not observed as it ought to be.

The Answer. The supposed agreement mentioned in this Article hath not as yet been delivered unto us, but having heard the same read over before his Majesty (out of a paper not subscribed with the hand of any Judge) we answer, that for so much thereof as differeth from these answers, it is against the laws and statutes of this Realm: and therefore the Judges of the Kings Bench never assented thereunto, as is pretended, neither doth the phrase thereof agree with the tearms of the laws of the Realm.

The 8. Object. Many other grievances there are, which in discussing of these former will easily appear worthy also of reformation.

The Answer. This Article is so generall, as no particular answer can be made thereunto, only that it appeareth by that which hath been said, that the Lord Admirall his Officers and Ministers principally by colour of the said void Non obstante, and for want of learned advice have unjustly incroached upon the Common laws of this Realm, whereof the marvell is the lesse, for that the Lord Admirall, his Lieutenants, Officers, and Ministers have without all colour incroached and intruded upon a right and prerogative due to the Crown, in that they have seised, and converted to their own uses goods and chattels of infinite value taken by Pirats at Sea, and other goods and chattels which in no sort appertain unto his Lordship by his Letters Patents, wherein the said Non obstante is contained, and for the which he and his Officers remain accountable to his Majesty. And they now wanting in this blessed time of peace causes appertaining to their naturall jurisdiction, they now incroach upon the jurisdiction of the Common law, lest they should sit idle and reap no profit. And if a greater number of prohibitions (as they affirm) hath been granted since the great benefit of this happy peace, then before in time of hostility, it moveth from their own incroachments upon the jurisdiction of the Common law. So as they do not only unjustly incroach, but complain also of the Judges of the Realm for doing of justice in these cases.

Touching our proceedings in granting of prohibitions concerning any of the said Articles, two things are to be considered of. First, the matter; and secondly, the manner. For the matter nothing hath been done therein by your Majesties Courts at Westminster, but by good warrant of law and former judiciall president. And for the manner, we have granted none in the time of Vacation, nor in the Term time in any of our Chambers, nor in the Court in the Terme time ex officio, but upon motion made in open Court by learned Councell, and after a day prefixed, and warning given to the adverse party, and upon reading of the Libell in open Court, and hearing of the Councell learned of such of the parties as were warned and did attend.

The said answers are proved and confirmed (as is aforesaid) by three kind of Authorities in law. First, by Authority of the High Courts of Parliament. Secondly, by Judgements and judiciall presidents. Thirdly, by Book-cases, and the authority of our Books.

¶ 1. *By Acts of Parliament.* 13 R. 2. cap. 5. Concerning the Acts of Parliament: It is enacted by the statute made in 13 R. 2. ca. 5. That the Admirals and their Deputies shall not meddle from henceforth with any thing done within the Realm of England, but only with things done upon the sea, according to that which hath been duly used in the time of the Noble King Edward Grandfather of King R. 2. By which it is manifest, that

that the jurisdiction of the Court of Admiralty is only confined to things done upon the sea, which the adverse party pleades, but claimeth by a colour of a Non obstante &c. which is utterly void, as hath been said.

By the statute of 15 R. 2. cap. 3. it is enacted and declared, That the Court of the Admirall hath no manner of conusance, power nor jurisdiction of any manner of contract, plea or querell, or of any other thing done or rising within the bodies of the Counties, either by land or by water, and also of wreck of the sea, but all such manner of contracts, pleas, and querels, and all other things rising within the bodies of the Counties as well by land as by water, as is aforesaid, and also wreck of the sea shall be tried, termined, discussed, and remedied by the laws of the land, and not before, nor by the Admirall nor his Lieutenant in no manner. Nevertheless of the death of a man, and of a mayhem done in great ships, being and hovering in the main stream of the great rivers only beneath the points of the same rivers, and in no other place of the same rivers, the Admirall shall have conusance. This latter clause giveth the Admirall further jurisdiction in case of death and mayhem, (with neither of which we ever medled) but in all other happening within the Thames, or in any other River, Port, or water, which are within any County of the Realm, (as all Rivers and Havens be, as hereafter shall manifestly appear) by expresse words of this Act of Parliament, the Admirall or his Deputy hath no jurisdiction at all. Wherein it is to be observed, how curious the makers of this statute were to exclude the Admirall of all manner of jurisdiction within any water which lyeth within any County of the Realm. 15 R. 2. ca. 3.

Nota the Lord Admirall hath greater jurisdiction in case of the death of a man, and mayhem, then in other cases.

The statute of 2 H. 4. cap. 11. enacteth, That the said Act of 13 R. 2. cap. 5. be firmly holden and kept, and put in due execution, and further at the prayer of the Commons that as touching a pain to be set upon the Admirall or his Lieutenant, that the statute and Common law shall be holden against them, and the party grieved shall recover his double dammages. By which Act it appeareth, that the statute of 13 R. 2. is but an affirmance of the Common law, as shall also manifestly appear hereafter. 2 H. 4. cap. 11.

Which three Acts cannot be dispensed withall by a Non obstante, as hath been said before, but remain in full force, and hath been put in due execution in all ages.

This statute of 27 Eliz. cap. 11. describeth particularly the limits of the Lord Admirals jurisdiction in these words. All and every such of the said offences before mentioned, as hereafter shall be done on the main sea, or coasts of the sea, being no part of the body of any County of this Realm, and without the precinct, jurisdiction and liberty of the Cinque ports, and out of any Haven or Pier, shall be tried and determined before the Lord Admirall, &c. So as by the judgment of the whole Parliament the jurisdiction of the Lord Admirall is wholly confined to the main sea, or Coasts of the sea being no parcell of the body of any County of this Realm. 27 El. cap. 11. 5 El. cap. 5.

And by these four Acts of Parliament all the said objections that have been made, or can be made against the proceedings of the Kings Courts at Westminster (being grounded on the same) are fully answered. And we will conclude this first part with the saying of God himselfe. Almighty God (as he himself out of a whirlwind spake) hath shut up the sea within certain dores and bonds, Quis conclusit ostiis mare, quando erumpebat, quasi de vulva procedens: circumdedi illud terminis meis, & posui vectem & ostia, & dixi, Usque huc venies, & non procedes amplius, & hic confringes tumentes fluctus ejus. Job 38. 8. 10, 11.

Concerning the second kind of proof, viz. by Judgments and judiciall presidents, every of them in all successions of ages in serie temporis, taking some in every age for many that might be cited. ¶ 2. *By Judgemẽts & judiciall presidents.*

Register Origin. fo. 129. F.N.B. 114. If goods be taken from an English man in Spain beyond the Sea, and the party cannot obtain justice there, he shall have a writ to the Sheriff to arrest the body of the offenders, and to seise of their goods to the value: which proveth that the Admirall cannot hold plea thereof, for that the Regist. Origin. fo. 129. F.N.B. 114.

the party hath remedy by the Common law, and the Admirals power is only Super altum mare.

Hil 6 H.6. Rot. 303. in Banc.

Hil. 6 H.6. Rot. 303. in the Court of Common pleas between John Burton Plaintif, and Bartholomew Put Defendant, the case was this upon the said statutes. The said Bartholomew sued the said John Burton in the Admirall Court before Thomas Duke of Exeter then Admirall of England, for that the said John Burton with force and arms the second day of September, anno 1 H.6. three ships of the said Bartholomew with his prisoners and merchandizes to the value of 960. marks, 5.s. 5. d.ob. in the same ships being, did take and carry away, supposing by his libell the same to be taken away, super altum mare, upon the high Sea. Although the taking aforesaid was infra corpus Comitatus in Bristow (the said ships lying in the Haven of Bristow) and not upon the high Sea, contrary to the form and effect of the said statutes; the parties descended to an issue, which was found for the Plaintif & dammages assessed for the Plaintif to 700. l. And it appeareth by the Record, that this being the first case that we can yet find that received judgement in the Court of Common pleas upon the said statutes, the same depended in advisement and deliberation eight Terms: and then the record saith, Et super hoc audito tam recordo quam veredicto prædicto, & per Curiam plenius intellect': Consideratum est quod præd Johannes Burton recuperet vers' prafat Bartholomæum damna sua prædicta occasione attachiamenti, prosecutionis, & vexationis, quam misarum & custagiorum ad septingentas libras per Juratores præd superius assess' in duplum per statutum, &c. quæ damna in duplo se extendunt ad mille & 400. l. & idem Barth. pœnam decem librarum erga dominum regem nunc per idem statut' incurrat, & capiatur, & querens remittit 400. l. Upon which Judgement four things are to be observed. First, that it is contemporanea expositio, being made within twenty years of the making of one of the said statutes, and contemporanea expositio est optima. Secondly, that albeit the said three ships with the prisoners and merchandizes in them lay in the Haven, inter fluxum & refluxum aquæ, and infra primos pontes, yet that the Haven is infra corpus Comitatus, and that for taking of the ships & the prisoners, and merchandizes in the same no suit ought to be in the Admirall Court, but at the Common law. Thirdly, that the Court of Admiralty hath no jurisdiction but Super altum mare, which is not within any County, for the Record saith, that the said three ships with the prisoners and merchandize in the same, did lye infra Comitat' Bristoliæ, & non super altum mare, as the Plaintif in the Admirall Court supposed the same to be. Lastly, that judgement so solemnly, and with such advisement given, if it were alone, were sufficient to give full satisfaction in this point: for Judicium est tanquam juris dictum, and Judicium pro veritate accipitur. But to proceed.

In Portu.

Pasch. 12 H.6. Rot. 124. in banc.

Pasch. 12 H. 6. Rot. 124. a like action brought by Robert Cupper upon the said statutes in the Court of Common pleas (reciting the said three statutes) against John Rayner of Norwich, for that the said Rayner did sue the said Cupper in the Court of Admiralty before John Countee of Huntingdon and Ivery Lieutenant to John Duke of Bedford Admirall of England, for that Rayner having a ship In Portu aquæ Jernemuthæ infra corpus Com' Norff. ready for a Voyage to Zealand, the said Cupper entred the said ship lying in the said Haven, and took away divers goods in the same being, asserendo per prædictum placitum res illas super altum mare emersisse, ac si res illæ super altum mare emersissent, cum non ibi, sed apud Jernemutham contra formam statutorum præd, which also proveth that the Haven is within the body of the County.

In the same Terme in the same Court a like action between John Widewell and the said John Rayner, Rot. 123. which with many others being to one effect we omit.

[a] Mich. 31 H.6. Rot. 315. in banc. Hil. 2. Ph. & Mar. Rot. 130. Cr. a prohibition upon a charter-party. Hil. 17 Eliz. Rot. 410. Cr. Spencers case, and infinite others upon Charter-parties.

[a] Mich. 31 H.6. Rot. 215. between William Hore, and Jeffery Unton for a suit in the Court of Admiralty before Henry Duke of Exeter, Admirall of England, concerning a contract of fourscore pounds upon a Charter-party of affrait of a ship of the said Jeffery called the Trinity of Harflew to goe from the Port of

Pole

Dole towards the parts of Iseland, cum contractus ille apud novam Sarum infra corpus Comitatus, & non super altum mare factus & junctus fuit, contra formam statutorum prædict'. The Defendant pleaded to issue, which was found against him, and dammages assessed to a hundred marks, and costs to forty pound: and thereupon judgement is given by the Court, that he should recover his dammages in duplo, according to the statute, &c. Which judgement directly proveth, that if a Charter party or any other contract be made within City, Town or County of the Realm, though the performance thereof be to be done and performed upon the high Sea, yet the Admirall hath no jurisdiction, because it may be tried by the Common law, as by the said Record it appeareth. But where the whole is to be done *supra altum mare*, and no part of it infra corpus Comitatus, the Admirall hath jurisdiction.

The statute of 32 H.8. c.14. Concerning fraights of ships giveth to the Lord Admirall or his Deputy power to make Certificate concerning the ships of Aliens in Ports, &c. And if the Lord Admirall or his Deputy be not reliant, then it giveth power to the Customer and Controller, or their Deputy to make Certificate: but without question this giveth no power to the Lord Admirall to hold plea of fraights of ships more then he had before, no more then it doth to the Customer and Controller, to whom equall power is given by the Act to make Certificate concerning the ships of Aliens, &c. in the absence of the Lord Admirall or his Deputy, as to the Lord Admirall or his Deputy being present; and yet no man will affirm, that the Customer & Controller can hold plea of fraights. 32 H.8. ca.14.

Mich. 38 H. 6. Rot. 36. cr. A Præmunire brought by John Cassy Esquire, Quitam, &c. against Richard Beauchamp, Thomas Paunce Esquires, and others upon the statute of 16 R.2. for suing in Curia Romana vel alibi, of matters belonging to the Common law. For that the Defendant did sue the Plaintif in the Admirall Court before Henry Duke of Exceter, that the said John Cassye did take and carry away certain Jewels *super altum mare*, ubi idem Johannes Cassye bona illa apud Stratford at Bowe *infra corpus Comitatus Middl'* & non *super altum mare* cepit, which is so evident, and of so dangerous consequent, as no application shall be made thereof. Mich. 38 H. 6. Rot. 36. cr.

In the book of Entries fo. 23. tit. Admiralty, it appeareth that the taking of a ship called the Trinity of London lying upon the River at E. in the County of Kent is not *super altum mare*, but *infra corpus Comitatus Kantiæ*. And therefore a suit for the taking of that ship lying there in the Admirall Court before John Earl of Huntingdon Admirall of England appeareth to be against the said Statutes, and yet no question that taking was *infra fluxum & refluxum maris, & infra primos pontes*. Book of entries fo. 23.

9 H.7. A Præmunire brought for a suit in the Admirall Court before John Earl of Oxford for taking and carrying away quandam naviculam apud Horton Key at Southhyn, &c. supposing the same to be *super altum mare*, where it was *infra corpus Comitatus*. Book of Entries ubi supra.

Mich. 16 H.8. Rot. 140. The River of Thames at Belingsgate is not within the jurisdiction of the Admirall, but *infra corpus Comitatus*. Mich. 16 H.8. Rot. 140.

35 H.8. A prohibition to John Dudley Knight, Viscount Lisle, for holding plea in the Court of Admiralty for a contract made in Rivo Thamesiæ, supposing the same to be *super altum mare*, where in truth it was in Rivo Thamesiæ apud B. in Com' Essex, which notwithstanding was *infra fluxum & refluxum aquæ, & infra primos pontes*. Book of Entries, ubi supra.

Hil. 36 H. 8. Rot. 38. c r. The like prohibition inter Wheler & Warner, Eodem termino Rot. Inter Tooly & Lewes, a prohibition for a contract made at Dantzke, *in partibus transmarinis*. And in 2 Jac. Regis, the whole Court of Common pleas, because the libell supposed the Act to be done *in partibus exteris & transmarinis*, granted a prohibition. Hil. 36 H.8. Rot. 38. cr. Hil. 2 Iac. Regis. *In communi Banc. Int' Theodor Tamlinson Quer' & Philips Def.*

Trin. 38 H.8. Rot. 126. between Crane and Bell a promise made at Dertmouth, that a ship called the Mary Fortune should passe safely without taking and surprising, &c. which ship was after taken by the Spaniards *super altum mare*, by Tr. 38 H. 8. Rot. 126.

is not determinable in the Court of the admiralty, for that albeit the taking was upon the high Sea, yet the promiſe was made upon the land, whereupon an action doth lye at the Common law.

Tr. 3 & 4 Ph. & Mar. Rot. 709. in Banco.

Tr. 3 & 4 Ph. & Mar. Rot. 709. between Lawrence Maſherode, and Richard Wyn, a prohibition out of the Court of Common pleas to the Court of the Admiralty, William Lord Howard then Lord Admirall being.

Eodem Termino Rot. 811. in Banc.

Tr. 3 & 4 Ph. & Mar. Rot. 811. the like prohibition granted out of the ſame Court to the Court of Admiralty between Robert Inne Plaintif, and Roger Garland Defendant.

Hil. 4 & 5 P. & M. Rot. 831.

Hil. 4 & 5 Ph. & Mar. Rot. 831. the like prohibition.

Many are the preſidents in the reign of the late Queen Eliz. in the Court of Common pleas, the Kings Bench and Exchequer, which we purpoſely omit, and inſiſt rather upon the more ancient, yet one or two we will remember concerning things happening beyond Sea, whereupon an action did lye at the Common law agreeable with the preſident in the reign of H. 8.

Mich. 39 & 40. El. Rot. 3158.

Mich. 39 & 40 Eliz. Rot. 3158. A prohibition out of the Court of Common pleas for a ſuit in the Admirall Court upon a bill under the parties hand and ſeal for French crowns, for that the bill was made beyond Sea.

Mic. 3 Jac. in Scaccar'.

And Mich. 3. Jac. a prohibition was granted in the like caſe to the Admirall Court by the Court of Eſchequer, for Sir John Swinarton having the priviledge of that Court for a matter riſing beyond the Sea. And divers prohibitions granted alſo in the like caſe in the Kings Bench.

See in the Chapt. of the Court of the Conſtable, and Marſhal.

For cauſes of actions which are tranſitory done out of the Realm, an action may lye at the Common law, but if the cauſe be criminall or locall done beyond Sea, then before the Conſtable and Marſhall only.

¶ 3. *By book-caſes and authorities in law.*

Concerning the laſt manner of proof, viz. by Book-caſes and authorities of our books.

In the Regiſter the moſt ancient book of the law, fo. F. N. B. fo. 87. I. & 88. F.

Temps E. 1. Tit. Avowry 192. in Communi banc.

In Temps E. 1. Tit. Avowry 192. a Replevin was brought for the taking of a ſhip in the Coaſt of Scarborow in the Sea, and for carrying the ſame from thence into the County of N. Mutford the Plaintif counteth of a taking in the Coaſt of Scarborow, which is neither town nor place, out of which a Jury may be taken, for that the Coaſt is four miles long, and alſo of a thing done in the Sea, this Court hath no conuſance, for certain judgement is given thereof to Mariners. Berry Chief Juſtice of the Common pleas; the King willeth, that the peace be as well kept on the Sea, as on the land, and we finde that you are come hither by due proceſſe, and therefore ruled him to anſwer. Out of which Foure things are to be obſerved. Firſt, that it is called the Sea which is not within any County from whence a Jury may come. Secondly, that the Sea (being not within any County) is not within the juriſdiction of the Court of Common pleas, but belongs to the Admirall juriſdiction. Thirdly, that when the ſhip came within the River, then it is confeſſed to be within the County of Northumberland. Laſtly, that when a taking is partly on the Sea, and partly in a River, the Common law ſhall have juriſdiction.

8 E. 2. tit. Coron. 399.

8 E. 2. tit. Coron. 399. It is no part of the Sea, where one may ſee what is done of the one part of the water, and of the other, as to ſee from one land to the other, that the Coroner ſhall exerciſe his office in this caſe, and of this the Country may have knowledge; whereby it appeareth that things done there are triable by the Country (that is, by Jury) and conſequently not in the Admirall Court.

43 E. 3. Vid. 5 E. 3. 3. Tit. Replevin. 41.

43 E. 3. Norff. as the ſaid Lord Dier voucheth the Record in Mich. 15 & 16 El. ſaying (quod vidi) the caſe was, that the Abbot of Ramſey was ſeiſed of the manor of Brancaſter in Norf. bordering upon the Sea, upon ſixty acres of marſh of which manor the Sea did flow and reflow; and yet it was adjudged parcell of the Abbots manor, and by conſequence within the body of the County unto the low water mark.

Paſch. 17 El. in Scaccario.

And it was adjudged Paſch. 17 El. in the Exchequer, Diggs being Plaintif, that

that the land between the flowing and reflowing of the ſea belonged to the Lord of the Mano^r adjoyning, as the Lord Dier doth there repo^rt.

48 E.3.3. If a mariner makes a covenant with me to ſerve me in a ſhip, upon the ſea, yet ſi lower ne ſoit pay, it ſhall be demanded in this Court by the Common law, & ne per la ley de mariner. 48 E.3.3.

46 E.3.tit. Conuſans 36. An Action of treſpaſſe was brought fo^r taking of a ſhip in the Haven of Hull againſt certain perſons; the Mai^or and Bailiffes of Hull demanded conuſans by the Charter of the King granted unto them, that the Citizens and Burgeſſes of Hull ſhould not be impleaded alibi de aliquibus tranſgreſſionibus, conventionibus & contractibus infra burgum, &c. quam infra burgum. And the Conuſans was granted; which p^rveth that the Haven of Hull where the ſhip did ride was infra Burgum de Hull, and by conſequence Infra corpus comitatus, and determinable by the Common law, and not in the Admirall Court. 46 E.3.tit.Conuſans 36.

7 R.2.tit.treſpaſſe in Stathom pl. 54. In treſpaſſe fo^r a ſhip and certain merchandize taken away (which treſpaſſe muſt of neceſſity be alledged in ſome Town and County in ſome Riv^er o^r Haven) the defendant pleaded, that he did take them In le haut mere ove les Normans queux ſont enemies le roy. And it is ruled a good plea, which concurreth with the other books. 7 R.2. Treſpaſſe in Stathom pl.54.

7 H.6.22.35. An action lieth at the Common law fo^r fo^reſtalling, &c. in a P^ort o^r Haven, fo^r that it is infra corpus comitatus, and triable by the Common law, and by conſequence the Admirall hath no juriſdiction there. 7 H.6 22.35.

19 H.6.7. The ſtatute doth reſtraine that the Admirall ſhall not hold plea of any thing riſing within any of the Counties of the Realm, but executions he may make upon the land. And therefo^re where it is ſaid in 22 Aſſ. pl. 93. that every water, which flows and reflows, is an arme of the ſea, yet it followeth not that the Admirall ſhall have juriſdiction there, unleſſe it be out of every County, o^r elſe ſuch a place whereof the Country cannot take knowledge, as it appeareth in the book of 8 E.2. befo^re cited. But of this mo^re hereafter. 19 H.6.7. 22 Aſſ.p.93.

Forteſcue cap. 32. fo. 38. Nam ſi quæ ſuper altum mare extra corpus cujuſlibet comitatus regni illius fiant quæ poſtmodum in placito coram Admirallo Angliæ deducantur per teſtes, illa juxta legum Angliæ Sanctiones terminari debent, which p^roveth by exp^reſſe wo^rds that the juriſdiction of the Admirall is confined to the high ſea, which is not within any County of the Realm. Forteſc.cap.32. fo.38.

2 R.3: fo.12. Hibernici ſunt ſub Admirallo Angliæ de re facta ſuper altum mare, which agreeth with the fo^rmer, viz. that the juriſdiction of the Admirall is ſuper altum mare. 2 R.3.12.

Stanford. lib. 1. pl. cor. fo, 51. b. If one be ſlaine upon any arme of the ſea, where a man may ſee the land of the one part and of the other, the Co^roner ſhall inquire of this, and not the Admirall, becauſe the Country may take conuſance of it, and doth vouch the ſaid authority of 8 E.2. whereupon he concludeth in theſe wo^rds. So this p^roveth, that by the Common law befo^re the ſtatute of 2 H.4. &c. the Admirall had no juriſdiction but upon the high ſea, which only authority were ſufficient to overrule all the ſaid queſtions. Fo^r hereby appeareth, that the juriſdiction of the Admirall is only confined by the Common law to the high ſea, and agreeth with all the fo^rmer Book caſes and Acts of Parliament. Stanf.pl cor.fo. 51.b.

4 & 5 Ph.& Mar.Dier 159. b. By the Libell in the Admirall Court the cauſe is ſuppoſed to commence *Sur le haut mere* & infra juriſdictionem *del Admiralty*, ubi revera facta fuit in tali loco infra corpus comitatus & non ſuper altum mare. Whereby it alſo appeareth, that the Lo^rd Admirals power is confined to the high ſea. 4 & 5 Ph.& Mar. Dier 159.b.

Paſch.28 Eliz. in the Kings Bench the caſe was, that a charter-party by deed indented, was made at Thetfo^rd in the County of No^rfolk, between Evangeliſt Conſtantine of the one party, & Hugh Gynne of the other part, by the which Conſtantine did covenant with Gynne that a certain ſhip ſhould ſail with merchandizes and goods of Hugh Gynne to Puttrell in Spaine, and there ſhould remaine by certaine dayes, &c. Upon the b^reach of which Covenant Gynne b^rought an Paſch.28 Eliz.

Action of debt of 500 li. upon a clauſe in the ſame Chapter, and alledged the breach of the Covenant, for that the ſhip did not remaine at Putterell in Spaine by ſo many dayes as were limited by the Covenant. Whereupon iſſue was taken and tried before Sir Chriſtopher Wray Chiefe Juſtice of England, and found for the plaintife: and in arreſt of judgement it was ſhewed, that this iſſue did riſe out of a place totally and meerly in a forein Kingdome out of the Realme, from whence no Jury of twelve men could come, and therefore the triall was inſufficient. But it was adjudged by Sir Chriſtopher Wray, Sir Thomas Gawdy, and the whole Court of Kings Bench after great deliberation, that the plaintife ſhould recover 500 li. beſides his dammages and coſts, for that the Charter party whereupon the action is brought was made at Thetford within this Realme, and that the triall being in the ſame place where the action was brought was ſufficient.

Mich. 30 & 31. Eliz. coram Rege.

And the like caſe was after adjudged in the ſame Court Mich. 30 & 31 Eliz. in an action upon the caſe upon an Aſſumpſit grounded upon an inſtrument called a Policy, commonly made between merchants for aſſurance of their goods, whereby the undertaker did aſſume that ſuch a ſhip ſhould ſaile from Melcome Regis in the County of Dorſet unto Abvile in France ſafely without violence, &c. and declared that the ſaid ſhip in ſailing towards Abvile, that is to ſay, in the River of Somme in the Realm of France, was arreſted by the French King, &c. whereupon iſſue was taken and tried, where the action upon the Aſſumpſit was brought, and againe the validity of the triall newly queſtioned, and in the end reſolved and adjudged as before: which judgement proves, that where part of the contract or other thing is made in any place within any of the Counties of the Realme, though the performance thereof be upon the high ſea, the triall and determination of the whole Act belongeth to the Common law, and conſequently the Court of the Admiralty ought not to deale therewith.

Theſe anſwers being delivered to King James, magna eſt veritas & prævaluit.

¶ *The Kings Prerogative of the ſea, &c.*

Now for the great prerogative and intereſt that the King of England hath in the ſeas of England, and for the antiquity of the Court of the Admiralty of England, and of the name of the Admirall, we have ſeen an ancient and a notable Record intituled, De ſuperioritate maris Angliæ & jure officii Admiralitatis in eodem. * So much whereof as we finde in Archivis regis, we will tranſcribe de verbo in verbum, as it is in the Record it ſelf.

¶ *The Antiquity of the Court of Admiralty long before the reign of* E. 3. *in whoſe dayes ſome have dreamed it began.*

* In Archivis in Turri London.

This cauſe was handled in or about the 22 year of E. 1. as by divers parts of the Record it appeareth.

Admirall of the Sea of England.

A vous Seignieurs Auditors Deputes per le Rois de Engliterre & de France a redreſſer les damages faits as gents de lour Roialmes & des auters terres ſubgits a lour ſeignuries per mer & per terre en temps de pees & de trewes. Monſtrent les procurours de Prelats & Nobles, & del Admirall de la mier d'Engliterre & de Comminalties des Cities & des Villes, & des Merchants, Mariners, Meſſagiers, & pelerins & des touts aultres du dit Royalme d'Engliterre & des aultres terres ſubgits a la ſeignurie du dit Roy d'Engliterre & daillours ſicome de la marine de Genne, Cateloigne, Eſpaigne, Alemaigne, Seland, Hoyland, Friſe, Dennemarch, & Norway & de pluſours aultres lieux del Empier, que come les roys d'Engliterre per raiſon du dit Royalme du temps dont il ny ad memoire du contrarie euſſent eſte en paiceable poſſeſſion de la ſoveraigne Seignurie de la mier d'Engliterre & des Iſles iſteants in ycele per ordinance et eſtabliſhment des lois, eſtatuts, et defenſes et des veſſeaux autrement garnies que veſſeaux de merchandiſe et de ſeurte prendre & ſauue gardes doner en tous cas que meſtier ſerra & par ordinance entre tout manere des gents taunt dautre ſignurie come de lour propre de

Time out of mind.

Lawes Statutes and Ordinances.

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tous aultres faitz neceſſaries a la garde de pees, droiture & equitie par elongues paſſants & per ſouveraigne garde & toute manere de coniſance & Juſtice haulte & baſſe ſur les dites lois, eſtatuts, ordenances, & defences, & pur touts autres faits queux a le government de ſouveraign Seignurie appertenir purrent es lieux avandits. Et A *de* B *Admirall de la dit mier deputey per le roy d'Englitere, & tous les aultres Admirals par meſme celuy Roy d'Englitere & ces anceſtors jades roys d'Englitere euſſent eſte en paiſeable poſſeßion de la dit ſouveraigne garde ove la coniſance & Juſtice & touts les aultres appurtenances avantditz forpriſe en caſe dappele & le querele fait de eux a lour ſouveraignes roys d'Englitere de defalte de droit ou de malvais judgement, et eſpecialment pur empechement metre & juſtice faire ſeurte prendre de la pees de tout manere de gents uſants armes en la dit mier ou menans niefs aultrement apparèilles ou garnies que nappertient au nief de marchants & en touts aultres points en queux homme poit avoir reaſonable cauſe de ſuſpition vers eux de rabbery, ou des aultres mesfaitz. Et come le maiſtre de Niefs du dit royalme d'Englitere en abſence des dits Admirals euſſent eſte en paiſible poſſeßion de conuſtre & juger des touts faits en la dite mier entre touts manere de gents ſelone les lois, eſtatuts & les defenſes, franchiſes & cuſtumes.*

De Boteſort, Admirall of the Sea.

Note for the antiquity of the Admirall of England. The ſaid De Boteſort was Admirall of the ſea coaſting upon Yar-couth in Norfolk (right over-againſt France) and of that ſtation in Anno 22 E. 1.

Et come en le primer article de lalliance nadgaires faite entre les dites Rois en les traites ſur le darreine pees de Paris ſoient compriſes les paroles que enſuient en une ſedule annexe a yceſte.

The league between E. 1. and the French King.

Primerment il eſt traite & accorde entre nous & les meſſagers & les procurours de ſurdiz en nom des dits Roys que yceux Roys ſerront lun a lautre deſores en avant bons verrois & loyaux amies & eydans countre tout homme ſauue Leſgliſe de Rome en tiels manere quæ ſi aſcun ou pluſours quicunques ilz fuiſſent voloient deponticer, empeſcher, ou troubler les dits Roys en franchiſes & liberties, priviledges es droits, es droitures, ou es cuſtumes de eux & de lour roialmes quils ſerront bons & loyaux amys & aidans countre toute homme que puiſſe venire & morir a defendre, gardir & maintenir les franchiſes, les liberties, les priviledges, les droitz, les droitures, & les cuſtumes de ſuſdites, except le dit Roy d'Englitere, Monſieur John Duc de Breban en Brabant & ſes heires deſcendus de lui & de la fille le Roy d'Englitere, & except pur le dit noſtre ſeignior le Roy de France excellent Prince Dubert Roy d'Alemaigne ſes heires Roy d'Alemaigne, & Mounſieur Johan Counte de Henan en Henan, & que lun ne ſerra en conſaile ne en aid ou lautre perde vie, membre, eſtate ne honour temporel. Monſieur Reymer Grimbald maiſtre de la navy du dit Roy de France que ſe dit eſtre Admirall de la dit mier deputey per ſon Seignior avantdit pur ſa guerre contre les Flemings apres le dite alliance faite & affirmee contre le forme & la force de meſme lalliance & lintention de cieux qui la firent l'office del Admirall en la dite mier d'Englitere par commiſßion du dit Roy de France torſecouſement empriſt & uſa un an & plus en pernant le gents & marchants du royalme d'Englitere & daillours per la dite mier paſſaints oveſque lour biens & les gents ainſi priſes livera a la priſon de ſon dit ſeignior le Roy de France lour biens & marchandizes a les reſceivours per meſme celuy roy de France a ceo deputey en les Ports de ſon dit royalme come a luy forfait & acquis fiſt amener per ſon juggement & agard, & la priſe

Margaret the third daughter of E. 1. was married to *John* the Duke of Brabant An. Dom. 1290. & 18 E. 1.

Monſier *Raymer Grimbald* Maſter of the French Navy.

priſe & detenue des dites gents ove lour dites biens & marchandizes & ſon dit juggement, & agard ſur la forfaiture de eaux & acqueſt ait juſtifie devant vous ſeignieurs Auditors en eſcripts per my lautoritie de ſa dite commiſſion ſur l'Admiralte avantdite per lui ainſi uſurpe & per une defenſe comunement fait per le Roy d'Englitere per my ſon poer lelonc la forme de le tiers article de lalliance avantdite qui contient les paroles deſuſecripts en requerant que de ceo il en fuſſe quitz & abſoluts en grand damage & prejudice du dite Roy d'Englitere & des Prelats & Nobles & aultres deſuſnomes. Purquoy les dits procurours & les noms de lours ditz Seignours a vous Seignours Auditors avantditz pryent que deliverance dewe & haſtine des dites gents oveſq; lour biens & marchandiſes ainſi priſes & detenues faicets eſtre fait al Admirall du dit roy d'Englitere a qui la cogniſãce de ceo apertient de droit ſicome deſſus eſt dit ainſi quils ſauns diſturbance de vous & d'aultre puiſſe de ceo conoiſtre & faire ceo que apertient a ſon office avantdit. Et que le dit Monſieur Reymer ſoit condempne & diſtreint a faire du ſatisfaction a touts les dits damages ſeavant come il purra ſuffire & en ſa defalte ſon dit ſeignior le Roy de France per que il eſtoit deputey al dit office, & que apres dewe ſatisfaction faitz as dits damages le dit Monſier Reymer ſoit ſi duement punis pur le blemiſſement de ladite alliance, que la puniſsion de luy ſoit as aultres example pur temps a venir.

The Admirall of England to whom the conuſance appertain, &c.

Item in alio Rotulo annexo.

Item, a la fin que venes & conſideres les formes des proces & les letters ordenees per les conſailers le Aiel noſtre ſeignior le Roy, &c. eſpecialment a retenir & maintenir la ſouveraign que ſes dits anceſtors Roys d'Englitere loloyent avoir en la dite mier d'Englitere, quant al amendmẽt declaratiõ & interpretation des loix per eux faites a governer touts maneres des gents paſſants per la dit mier. Et primerement a ſon Admirall & as Maiſters & Mariners des Niefs de Cync ports d'Englitere, & des autres terres annexes a la corone d'Englitere emendant a ſa armee en la dite mier pur retenir & maintenir la garde des lois avantditz, et la puniſsion de touts faitz al encontre en la mier ſuſdite.

Admirall of England.

Item in alio Rotulo de Articulis ſuper quibus Juſtitiarii domini Regis ſunt conſulendi de Anno regni regis E.3.12.

*Item ad finem quod reſumatur & continuatur ad ſubditorum proſecutionem forma procedendi quondam ordinata & inchoata per *avũ domini noſtri regis & ejus conſilium ad retinendum & conſervandum antiquam ſuperioritatem maris Angliæ, & nos officii Admiralitatis in eodem quoad corrigendũ, interpretandum, declarandum & conſervandũ leges & ſtatuta per ejus anteceſſores Angliæ Reges dudum ordinata ad conſervandum pacem & juſtitiam inter omnes gentes nationis cujuſcunque per mare Angliæ tranſeuntes, & ad cognoſcendum ſuper omnibus in contrarium attemptatis in eodem, & ad puniendum delinquentes & damna paſsis ſatisfaciendum. Quæ quidem leges & ſtatuta per dominum Richardum quondam regem Angliæ in reditu ſuo à terra ſancta correcta fuerunt, interpretata & in inſula Oleron publicata & nominata in Gallica lingua* La ley Olyron.

* E.1.avus E.3.

R.1. Inſula de Olyron in Gallia.

And

And long before this King Edgar **in his Charter ſaith thus:** Mihi conceſſit propitia Divinitas cum Anglorum imperio omnia regna inſularum Oceani cum ſuis ferociſſimis regibus uſque Norwegiam ac maximam partem Hiberniæ cum ſua nobiliſſima civitate de Dublina Anglorum regno ſubjugare, &c. See this Charter in the Epiſtle to the 4 book of Reports.

We have alſo found a Record in 10 E.3. **in theſe words.**

Rex dilecto & fideli ſuo Galfrido de Say Admirallo Flotæ ſuæ Navium ab ore aquæ Thameſiæ verſ' partes occidentales, Salutem. Cum nuper vobis per literas noſtras mandaverimus quod vos una cum quibuſdam navibus de quinque portubus noſtris quas de guerra pro obſequio noſtro muniri & parari mandavimus ſupra mare proficiſceremini ad obviand' & reſiſtend' quibuſdam galeis in diverſis partibus exteris proviſis & hominibus armatis munitis quæ ad partes dominii noſtri ad gravand' nos & gentes noſtras, vel ad partes Scotiæ in inimicorum noſtrorum ibidem ſuccurſum divertere ut accepimus proponebant. Et quia jam nobis ab aliquibus eſt relatum quod galeæ hujuſmodi uſque ad numerum viginti & ſex ad partes Britan' & Norman' noviter acceſſerunt & ibidem adhuc ſe tenent ad mala, ut creditur, contra nos & noſtros quæ poterunt perpetrand', vel ad ſuccurrend' dictis noſtris, ut prædicitur, inimicis. Nos advertentes quod progenitores noſtri reges Angliæ domini maris Anglicani circumquaque & etiam defenſores contra hoſtium invaſiones ante hac tempora extiterunt, & plurimum nos tæderet, ſi honor noſter regius in defenſione hujuſmodi noſtris (quod abſit) deperiat temporibus, aut in aliquo minuatur, cupientéſque hujuſmodi periculis auxiliante domino obviare, ac ſalvationi ac defenſioni regni & populi noſtrorum providere, malitiámque hoſtium noſtrorum refrenari: Vobis in fide & ligeancia quibus nobis aſtricti eſtis, & ſicut de vobis ſpecialiter confidimus, mandamus firmiter injungendo quod ſtatim viſis præſentibus et abſque ulteriori dilatione naves portuum prædictorum, ac alias naves quæ jam parata exiſtunt ſupra mare teneatis, &c. Rot.Scotiæ 10 E.3.m.16.

And becauſe the Reader by this Record ſhall diſcern, that of ancient time there were ſeverall Admirals (for the wiſdome of thoſe dayes would not truſt one man with ſo great a charge, nor any man to have a certain eſtate in an office of ſo great truſt:) I will briefly give the Reader ſuch light thereof as I have found of Record.

Rex commiſit Galfrido de Lucy maritimam Angliæ cuſtodiend' quamdiu domino Regi placuerit, &c. Rot.pat. anno 1 H.3.

Rex commiſit Richardo Aguillum marinam regis Norff. & Suff. &c. quamdiu nobis placuerit. Rot.Pat.anno 9 H.3.

Petrus de Rival capitaneus Pictanie habet ad totam vitam ſuam cuſtodiam omnium Portuum & totius coſteræ marinæ Angliæ, excepto Portu de Dovor, qui eſt in cuſtodia Huberti de Burgo. Rot.Cart.15H.3.

Willielmus de Leybourne conſtituitur capitaneus nautarum & marinariorum de regno & poteſtatis regis, quamdiu regi placuerit. Rot Vaſcon. 22 E.1.m.8.

Willielmus de Leybourne Admirallus Angliæ. Rot.Pat.23 E.1.

Willielmus de Leybourne capitaneus marinariorum, &c. 2 parte Pat.anno 25 E.1.m.14

To let you know what we have obſerved in thoſe times: there were alſo two other, the one had the government of all the Fleet from the mouth of the Thames Weſtward, and the other from the mouth of the Thames Northward. Clauſ in Dorſ. m.18.

Johannes Botetort cuſtos Regis Portuum maritimorum verſus partes Boreales. 25 Martii. 1 parte Pat. 25 E.1.m.9.

Nicholaus Kyriell conſtituitur Admirallus flotæ omnium Navium ab ore aquæ Thameſis tam quinque Portuum, quam aliorum Portuum & locorum per coſteram maris verſus partes occidentales, quamdiu Regi placuerit, Teſte Rege apud Turrim London 8 Decembris. 1 parte Pat. 10 E.2.

Robertus

Clauſ.15 E.2. Pat.15 E.2. Teſte Rege apud Ebor. 19 Maii.

Robertus de Leyborn Admirallus quarundam Naviũ Regis ſup mari occidentali. Robertus Battayli Admirallus flotæ Navium ab ore aquæ Thameſis de ſingulis Portubus verſus auſtrum.

1 parte Pat. anno 1 E.3.m.21.

Johannes Perbrome conſtituitur capitaneus, & Admirallus flotæ Navium magnæ Geremuthe & omnium aliorum locorum ab ore aquæ Thameſis per coſteram maris verſus partes Boreales, quamdiu, &c. Teſte Rege apud. Stamf. 21 Aprilis. Warroſius de Valloignes conſtituitur capitaneus & Admirallus flotæ Navium ab ore aquæ Thameſis tam quinque Portuum quam aliorum Portuum & locorum per coſteram maris verſus partes occidentales, quamdiu, &c. ut ſupra.

2 parte Clauſ. 12 E.3. in Dorſ.

Petrus Bard Admirallus Navium ab ore aquæ Thameſis verſus partes occidentales. 18 Auguſti. Thomas de Drayton Admirallus ab ore aquæ Thameſis verſus partes Boreales. 18 Auguſti.

And ſo in the reigns of R.2. H.4. H.5. H.6. **But in theſe and in former times there was a great Admirall of England,** Vid. ſupra pa. 142, 143, 144.

Rot.pat.anno 14 H. 6. 25 Oct. 18 E.4.

The King did by Charter conſtitute John Holland **Duke of Exeter and** Henry **his ſon to be** Admirallos Angliæ, Hiberniæ, & Aquitaniæ, pro termino vitæ.

This Charter being of a judiciall office and granted to two, we hold to be void: for ſuch ancient offices muſt be granted as they formerly have been. This Duke is he that is mentioned in the former Records, who being a great Peer of the Realm endeavoured to incroach upon the Common law, but the ſubjects by courſe of law were defended and recompenſed.

Rot Parl.7 H.4. nu.19,20.&c. 26. & 142. 9 H.4. nu.19.

The Merchants, Partners, and owners of ſhips undertook the ſafeguard of the Seas for the Subſidies of Tunnage and Poundage, &c. and that Merchants ſhould name two perſons, the one for the South part, the other for the North part, who by Commiſſion ſhould have the like power as other Admirals have had touching the ſame.

Addition of ſome Records of Parliament.

11 H.4.nu.24. Rot Par.17 R.2. 48. 4 H.4.nu.47. 11 H.4.nu.61.

All ſtatutes made concerning the Court of the Admirall ſhall be obſerved.

Sundry townes of the Weſt part prayed remedy againſt the Officers of the Admiralty for holding plea of matters determinable by the Common law, the which they pray may be revoked: the Kings anſwer was, The Chancelor by the advice of the Juſtices upon hearing of the matter ſhall remit the matter to the Common law, and grant a prohibition.

7 R.2.nu.14.

The Earl of Northumberland Admirall of the North, and the Earl of Devon Admirall of the Weſt, to receive the Subſidy of Tunnage and Poundage, and to keep the Seas.

Addition of Books.

1 part Inſtit. § 459.& 677. 11 H.4.fo.11.

See the Firſt part of the Inſtitutes, Sect. 459. & Sect. 677. **where** Littleton **ſpeaketh of a man out of the Realm, or beyond Sea, and adde thereunto the notable caſe in** Mich. 11 H.4.fo.11.pl.85. Sovingles **caſe, the Defendant in an appeal of death being outlawed, brought his writ of Error, and aſſigned for error, that at the time of the Outlawry, and before, he was in the Kings ſervice upon the Sea in the company of the Lord** Berkley **then Admirall, and had a writ unto him to certifie.**

Lord Berkley Admirall.

6 E. 2. Tit. Protection 46. 7 R. 2. Tit. Treſpaſſe Satham. 10 H. 7. fol. 7. 2. Vide 18 H.6.nu.52, **where the owner of a ſhip ſhall anſwer for hurt done by his ſhip, though he be not party thereunto.**

Vide Lacies caſe, Cr.25 El. li.2.fo.93. Vid.li.5.fo.106,107. & 108. Sir Henry Conſtables caſe. Lib.6.fo.47. Dowdales caſe. Brook tit. error 177.

See certain ſtatutes, viz. 27 E.3. cap.13. Stat. Staple, 31 H.6. cap.4. 2 R.3. cap.6. 28 H. 8.cap.16.

¶ *The name.* **It appeareth by the former Records, that the Admiralty is ſometime called** Admiralitas, **ſometime** Admirallatus, **and ſometime by other names, as** Admirallus, Capitaneus **or** Cuſtos maris, **or** Marinæ, **or** Maritaniæ, **or** flotæ navium, **that is,**

is, of the Navy floating on the Sea. Ley marine, ley del mariners.

The Officer is called Admirall indifferently both in English and in French. We name him in Latin Admirallus, and the Court Curia Admiralitatis, derived of Amir, id est, Præfectus. & ἀμὴρ i. Marinus, Præfectus marinus, Admiralius, Admirallus. Admiralli curia res maritimas tractat: In hac numerantur Admirallus Angliæ, locum tenens & judex, scribæ duo, serviens Curiæ Viceadmirallii Angliæ. Camden.

Hæda or Hitha, i. Portus a Haven, as Queen-hithe, Lamb-hithe, &c. Hafne Courts, now Haven or Port Courts, Hable, i. Portus.

To conclude, the King of Englands Navy doth excell the shipping of all other forain Kings and Princes: for if you respect beautifull statelinesse, or stately beauty, they are so many large and spacious Kingly and Princely Palaces. If you regard strength and defence, they are so many moving impregnable Castles, and Barbicans, and were termed of old the wals of the Realm. When our English Navy is among the ships of other Nations, it is like Lions inter pecora campi, and like a Falcon inter phasianos, perdices, & alia volatilia timida cœli.

Besides, no part of the world have such timber for building and repairing of ships, as our King hath.

CAP. XXIII.

The Court of the Commission under the Great Seal by force of the statute of 28 *H.8. cap.* 15.

28 H.8.cap.15.

The Commissioners.

This Court must be holden Coram Admirallo Angliæ, seu ejus locum tenente, and 3 or 4 such other substantiall persons, as shall be named by the Lord Chancelor for the time being.

The Jurisdiction.

Their jurisdiction is to heare and determine all Treasons, Felonies, Robberies, Murders, and confederacies committed or done upon the Sea, &c.

To be heard & determined by the Common law.

These offences shall be heard and determined according to the course of the Common law, and therefore some of the Judges of the Realm are ever in this Commission.

See the 3 part of the Instit. Cap. Piracy. pa. 111, 112, &c.

Concerning the mischief that was before the making of this statute, and how the said Act hath been formerly expounded, you may read plentifull matter in the Third part of the Institutes, Cap. Piracy.

The processe and proceedings herein are in the name of the King: See before Cap. Chivalry, pa. 124. that the statute of 35 H.8. cap. 2. nor that of 5 E.6. cap. 11. taketh not away this Act of 28 H. 8. concerning treasons; Note, that in all the Commissions granted for the execution of this Act of 28 H.8. since the said Acts of 35 H.8. 5 E.6. power and authority is given to hear and determine all treasons, &c. done upon the Sea.

CAP.

CAP. XXIV.

Of Port-motes, *alias* Port courts, *alias* Port-mote Courts.

A Portmote is a Court kept in Haven Towns, or Ports, and thereof taketh his name Curia Portus, &c.

Portus eſt locus in quo exportantur & importantur merces, à portando: And they are Portæ regni the * gates of the Realm. [a] Hitha and Heda often in Domesday is taken for a Haven or Port, anciently written Hafne and now Haven, by changing the f into v, as is usuall.

Every Haven is within the body of the County, &c. whereof see before plentifull matter in the Chapter of the Court of the Admiralty proceeding according to the Civil law. See 43 Eliz. cap. 15.

* See in the Chapt. of the Courts of the Foreſt.

[a] Hereof commeth in London Queenhithe, and in Lambith Lãbhithe, &c.

CAP. XXV.

The power and authority of Commiſsioners and others for the maintaining and erecting of Beacons, ſignes of the Sea, or Light-houſes, and Sea-marks, and concerning Watches.

See the 3 part of the Inſt. Cap. buildings p. 204.

Beacon.

BEacon, this word is derived of the Saxon word Beacon, *i.* Speculum, unde ſpeculantur adventus hoſtium, and is often called Signum ſpeculatum, and Bechan in the Saxon language is ſignum dare, and we uſe the word to becken to at this day.

Before the reign of E. 3. there were but ſtacks of wood ſet upon high places, which were fired when the comming of enemies were deſcried, but in his reign pitch bores, as now they be, were in ſteed of thoſe ſtacks of wood ſet up, and this properly is a Beacon.

Light-houſes.

Light-houſes, Ignes ſpeculatorii, ſeu monitorii, ſeu lumen maritimum, ſeu * pharus, unde verſus,

Lumina noctivagæ tollit Pharus æmula Lunæ.

* ἀπο τῦ φαίνω, *id eſt, lucidum.*

These Light-houſes are properly to direct Seafaring men in the night when they cannot ſee marks, and these are alſo Signa ſpeculatoria.

Sea-marks.

Sea-marks, as Steeples, Churches, Caſtles, Trees, and ſuch like for direction of Seafaring men in the day time, and these are called Signa marina, or ſpeculatoria, or ſigna nautis, whereof Virgill 5. Æneids.

Hic viridem Æneas frondenti ex ilice metam
Conſtituit * ſignum nautis pater, unde reverti
Sciverit, & longos ubi circumflectere curſus, &c.

* Id eſt inſigniũ.

So as you may divide Specula or ſigna ſpeculatoria, or ſigna nautis into three branches, viz. into Beacons, Light-houſes, and Sea-marks.

At the Common law none but the King onely could erect any of these three, which ever was done by the Kings Commiſſion under the Great Seal, as taking ſome few examples for many.

De

De ſignis ſuper montes per ignem faciend'.

De ſignis ſuper montes faciend'.

Rex aſſignavit [a] Henricum Epũ Norwic', & [b] Willielmum Comitem Suff. & alios, &c. (inter alia) ad ſigna ſpeculatoria ſuper montes in com̃ Norff. ponend'. Et ſimiles Commiſſiones in aliis Comitatibus.

Rot. Scotiæ. 10 E. 3. Rot. Clauſ. Vaſc' 10 E. 3. Rot. Franc' 47 E. 3. m. 20.

Vide Rot. Claus' 1 R. 2. m. 41. in Dors' pro vigiliis & ignibus ſpeculatoriis, & monitoriis.

He that is deſirous to ſee more of Beacons, &c. and watching of the ſame, let him read the [c] Act of 5 H. 4. which is an Act of Parliament, and Dors' Pat. Anno 28 H. 6. parte 2. m. 21. in com̃ Kanc' & memb. 13. pro com̃ Norff. pro ſignis, Anglicè **Beacons**, & vigiliis. Et Dors' Pat. Anno 1 E. 4. parte 3. &c.

[a] Henricũ Spencer, he of a Souldier became a Biſhop.

[b] William Ufford comes Suff.

[c] Rot. Par. 5 H. 4. nu. 24. not in print worthy to be read.

But of latter times by the Letters Patents granted to the Lord Admirall he hath power to erect Beacons, Sea-marks, and Signs for the Sea, &c.

By the Act of 8 Eliz. **it is provided and enacted,** That the Maſter, Wardens and Aſſiſtants of the Trinity houſe of Deptford ſtrond (a company of the chiefeſt and moſt expert Maſters and Governors of ſhips) ſhall and may lawfully from time to time at their will and pleaſure, and at their coſts, make, erect, and ſet up ſuch and ſo many Beacons, marks and ſigns for the Sea in the Sea-ſhoars, and upland neer the Sea coaſts, or forelands of the Sea only for Sea-marks, as to them ſhall ſeem moſt meet, whereby the dangers may be avoided, and ſhips the better come to their Ports. And all ſuch Beacons, marks and ſigns ſo by them to be erected, ſhall be continued, renewed and maintained from time to time at the coſts and charges of the ſaid Maſter, Wardens and Aſſiſtants. **An excellent law, that this power and authority was given to them which had greateſt skill, ſeeing they were works for the ſafety of the Realm, and ſafeguard of the lives of Sea-faring men, and that theſe works ſhould be erected, and made, and continued by them at their own coſts and charges, becauſe they knew to goe the neereſt way.**

8 Eliz. cap. 13.

Beconagium **ſignifieth money due or payable for the maintenance of Beacons, or the watching of the ſame. What puniſhment they incur which take down, fell, or otherwiſe cut down any Sea-marks, ſee the ſaid Act of** 8 El. ubi ſupra, **wherein it is to be obſerved, that if the perſon offending be not able to pay the penalty therein inflicted, he ſhall be deemed convict of outlawry, ipſo facto, to all conſtructions and purpoſes: the like whereof we have not obſerved in any other ſtatute.** Wardwite, aliàs warwite, or ward penny, **to be free from contribution of money to watches and wards.**

Paſch. 1 Jac. It was reſolved by the two Chief Juſtices, Attorney and Solicitor, that this Act extended as well to Light-houſes in the night, as to Beacons, &c. by the day.

Convict of outlawry.

We have out of an ancient manuſcript tranſcribed this ordination that followeth, which in the County of Norff. hath been obſerved, and it is very probable that the like hath been done by like Authority in other maritime Counties.

Ordinatio pro Vigill' obſervand' in Com' prædict' à Lynne uſque Yermouth.

Norf.

Hac igitur authoritate mandati nos Robert de Monte alto & Thomas de Bardolfe mandamus Vic' Norff. quod venire faciat coram nobis apud Norwic' die Mercurii in feſt' decollationis Sancti Johannis Baptiſt' prox' futur' omnes milites, omnes capit' Conſtabul' hundred, & Conſtabul' vill' & duos homines de diſcretior' cujuſlibet villæ ubi portus vel applicat' Navium in balliva ſua tam infra libertat' quam extra in com' prædict' ad conſulend', formand', auxiliand' qualiter & quomodo dict' cuſtod' ſecurius pro ſalvatione partium illarum fieri poſſit, & ad faciend' quod ex parte dom' regis ſuper præmiſſis injungitur. Ad quem diem nos dict' Robert' & Thomas perſonaliter aceeſſimus ibidem, ac milit', capit' Conſtabul' hundred', Conſtabul' vill' cum omnibus hominibus vill' ubi applicat' Navium exiſt' de Portu Lynne & de Portu Yarmouth coram nobis ibidem compar', & aſſeruerunt, quod valde neceſſe eſſet pro ſalvat' totius patriæ quod vigill' fiant

Robertus de Monte alto and *Tho. de Bardolfe* ſat in Parliament. 14 E. 2. as Barons of the Realm, as appeareth in the Parliament Rols.

* 5 H. 4. cap. 3. Watches to be made upon the Sea coaſt by the number of the people, in the places, and in manner and form as they were wont to be.

*in locis periculoſis ſicut * antiquo more fieri ſolebant juxta mare. Et quod omnes homines corpor' valid' de Com' Norf. contribuend' ad ill' faciend' per quod ordinat' & conſens' eorum concordat' eſt quod duæ vigill' per ſex homines de corpore potentiorum per dies quam per noctes fieri in hundred' de Freebrigge, viz. apud Wolverton, & apud Clencherne, eo quod dict' hundred' jung' ſe mari à Wisbiche uſque Derſingham per 14. leucas. Et quod quilibet vigilans capiet per diem & per noctem pro vadiis ſuis 3 d. Et quod hundred' de Clackcloſe adjung' eidem hundred' de Freebrigge ad contribuend' ad vigill' illa faciend', viz. pro qualibet ſeptiman' 4 s. 6 d. & idem hundred. de Freebrigge 6 s. pro ſeptiman', Et ſciend' eſt 77 vill' continentur in dict' hundredo quæ aſſignantur ad dict' vigill' faciend'.*

Freebrigge.
Clackcloſe.

Fiat etiam una vigill' apud Southlynne in Clinchern, &c.

Smythdon.

Item quod una vigill' fiet in hundred' de Smithdon apud Thornham per ſex homines, eo quod dictum hundred' jungit ſe mari de Derſingham uſq; Deepedal fenn per 12 leucas. Et quod Hundred de Southgrenhoe & Laundiche adjung' eidem hundred' de Smithdon ad contribuend' ad vigill' ill' faciend', viz. hundred' de Southgrenhoe 3 s. 6 d. per ſeptiman' & hundred de Landiche 4 s. per ſeptiman', & hundred' de Smithden 3 s. & continent' in dict' hundred' 79 vill' ad vigill' illa faciend.

Southgrenhoe.
Laundiche.

Gallow.

Et fiat una vigill' in hundred' de Gallowe apud Burnham per 4 homines, eo quod dict' hundred' jungit ſe mari de Deepedale uſque Holkham per 3 leucas. Et hundred' de Brothercroſſe adjungit' eidem hund' ad contribuend' ad vigill' ill' faciend', viz. hundred' de Brothercroße 3 s. per ſeptim' & idem hundred' de Gallowe 4 s. per ſeptim'. Et ſciend' eſt 45. vill' ſunt in dict' hundred' ad vigill' illa faciend.

Brothercroſſe.

Northgrenhoe.
Weyland.
Giltcroſſe.
Grimſhoe.
Erſham.

Item fiet un' vigil' in hundred' de Northgrenhoe apud Holkham per 6. homines, eo quod dict' hundred' jungit ſe mari, à Holkham uſque Marſton per 6. leucas, Et hundred' de Weyland, Giltcroſſe, Grimſhoe, & Erſham adjung' eidem hundred' ad contribuend' ad vigill' illa faciend', viz. Weylend 2 s. per ſeptim', Grimſhoe 2 s. per ſeptim', Giltcroße 2 s. per ſeptim', & Erſham 2 s. per ſeptim', & idem hundred' de Northgrenhoe 2 s. per ſeptim'. Et ſciend' eſt quod 76 vill' ſunt in dict' hundred' ad vigill' ill' faciend.

Holt.

Item fiet unum vigill' in hundred' de Holt apud Waborun per ſex homines, eo quod dict' hundred' jungit ſe mari à Marſton uſque Sheringham per 7 leucas. Et hundred de Eynsford & Hempſteed adjung' eidem hundred' de Holt ad contribuend' ad vigill' faciend', viz. Eynsford 4 s. per ſeptim', Hempſteed 3 s. 6 d. per ſeptim' & idem Hundred de Holt 3 s. per ſept. & ſciend' eſt quod 70 vill' ſunt in dict' hundred' ad vigill' ill' faciend.

Eynsford.
Hemſteed.

Northerpinghã

Item fiet unum vigil' in hundred' de Northerpingham in duobus locis, viz. apud Runton & Trimmingham per 5 homines, eo quod dict' hundred' jung' ſe mari à Sheringham uſque Munſlye becke per decem leucas, & hundred de Southerpingham & Mitford cum vill' infra liberi' adjung' eidem hundred' ad vigill' illa faciendas, viz. Southerpingham 6 s. 8 d. per ſept' Mitford 3 s. 6 d. per ſept' & Northerpingham 12 s. 6 d. per ſept'. Et ſciend' eſt quod 77 vill. ſunt in hundred. præd' ad vigill' ill' faciend.

Southerpinghã.
Mitford.

Tunſtead.
Humbleyard.
Fowrehoe.

Item fiet unum vigill' in hundred de Tunſted apud Baſtwick per ſex homines, eo quod dict' hundred jungit ſe mari à Munſley uſque Walcote per 4 leucas. Et hundred' de Humbleyard & Fowrehoe adjung' eidem hundred.

dred, ad contribuend. ad vigil. ill. faciend', viz. Humbleyard 3 s per ſept. Fowrehoe 3 s. per ſep. & Tunſtead 4 s. 6 d. per ſept. & ſciend. eſt quod 76. vill. ſunt in dict. Hund. ad vigil. ill. faciend.

Item fiet unum vigil. in hundred. de Happing in duobus locis. viz. *apud Happiſborow per 4 homines & apud Waſſueſham per 4 homines, eo quod dict. hund. jungit ſe mari à Walcote uſque Wimbeſdele in loco periculoſo per 6. leucas. Et hundred. de Taverham, Depwade, Shropham & Diſſe adjung. eidem hund. de Happing ad contribuend. ad vigil. ill. faciend.* viz. *hund. de Taverham 2 s. per ſept. Depewade 3 s. per ſept. Shropham 5 s. per ſeptim. & Diſſe 2 s. per ſept. & dict. hund. de Happing 2 s. per ſept. Et ſciend. eſt quod 60. vill. ſunt in hund. prædict. ad vigil. ill. faciend.* Happing.

Item fiet unum vigil. in hund. de Eaſtflegge & Weſtflegge in tribus locis, viz. *apud Winterton per 6 homines, apud Saltivos haven per ſex homines, & apud Fordham per ſex homines, eo quod dict. hund. jungit ſe mari a Wykeldock uſque Bunton in Mitford in loco periculoſo per 7 leucas, Et hund. de Walſham, Blowfeild, Loddon, & Clavering adjung. eidem hund. ad contribuend. ad vigill. illa faciend.* viz. *Walſham 4 s. 6 d. per ſept. Blowfield 4 s. 6 d. per ſept. Loddon 5 s. 6 d. per ſept. Clavering 5 s. 6 d. per ſept. Weſtflegg 2 s. per ſept. Eaſtflegg 2 s. per ſept. Et ſciendum eſt quod 102 vill. ſunt in dict. hund. ad vigil. ill. faciend.* Eaſtflegge. Weſtflegge. Walſham. Blowfeild. Loddon. Clavering

*Præcept. eſt omnibus capital. Conſtabul. de hund. adjung. mari in locis prædict. in forma prædicta hac inſtant. die dominica prox. futur. & ſimiliter præcept. eſt eiſdem capital. Conſtabul. & omnibus aliis ſubconſtabul. hundred. totius Com. quod ſine dilatione levari & reparari fac. ſigna & fierbares ſuper mont. altior. in quolibet hund. Ita quod tota patria per illa ſigna quotieſcunque neceſſe fuit premuniri poſſet, & quod ipſe Conſtabul. capital. per avizam Conſtabul. villarũ & aliorũ proborũ hominũ agiſt. fac. fideliter denar. pro vad. vigil. in hundred. prædict. inſtant. quod ordinat. ſolvend. de ſeptimana in ſeptim. ita quod defect. in vigil. prædict. nullo modo inveniatur per eorum defect. & ſimiliter quod omnes qui agiſt. ſunt ad arma & potent. ad portanda arma, & omnes illi qui loco potent. ad arma ſua portanda aſſignat. ſint provisi & parati ſint indies nocte ad veniend. ſolemniter diſtinct. & aperte in præſent. domini Walteri de Norwic. Epiſcopi juxts nos aſſiden. ibidem cur. * Cãcar. totius Com Norf. coram nobis un. fecimus proclamar. Et ſimiliter præcept. eſt Vic. quod levar. fac. denar. agiſt. in hundred. prædict. pro coſtis & vad. præd. ſolvend.* Signa. Fierbares * Vigiliarum.

For watches, and againſt night-walkers, ſee the ſtatute of Winch. 13. E. 1. cap. 4. 5 E. 3. cap 14. Vid. 5 H 7. 5.

Vide Lamb. inter leges Edovardi regis, fo. 136. b. & inter leges Willielmi Regis fo. 125. a.

Quod homines de Larkfield, Filbarow ſtreet, Newchurch, & Worth in Com. Kanc' tenentur facere vigilias in Romney Marſh. Dorſ. Clauſ. 8 H. 4. m. 8. & 12

CAP. XXVI.

De Conſervatore ſeu cuſtode Treugarũ, i. Induciarũ & ſalvorum Regis Conductuum,

And incidently of the office, authority, and priviledge of Ambaſſadours; And of Leagues, Treaties, and Truces.

2 H.5.ca.6.ſtat.1. By the ſtatute of 2 H. 5. robbery, ſpoyling, breaking of Truces, and ſafe Conducts by any of the Kings liege people and ſubjects within England, Ireland, and Wales, or upon the maine ſea, was adjudged and determined to be High Treaſon: but this Branch concerning High Treaſon is repealed by the ſtatute of 20 H. 6. But by the ſaid Act of 2 H. 5. for the better obſervation of truces and ſafe conducts, Conſervator induciarum & ſalvorum regis conductuum was raiſed, and appointed in every Port of the ſea by Letters Patents: His office was to enquire of all offences done againſt the Kings truces and ſafe conducts upon the main ſea (out of the Counties, and out of the Liberties of the Cinque-ports) as Admirals, of cuſtome, were wont.

20 H.6 cap.11.

It concerneth the Juriſdiction of divers Courts, and eſpecially of the ſaid Court before mentioned upon the ſaid ſtatute of 28 H. 8. and of the Court of the Admiralty, to know the rights of Leagues and Ambaſſadours, as far as the lawes of England extend unto, for of them we will only treat.

19 E.4.6.b. 18 H.6.cap.4. 20 H.6.cap.1. Vide ſupra.p.132. * Regula.

All leagues or ſafe conducts are, or ought to be of record, that is, they ought to be inrolled in the Chancery to the end the ſubject may know, who be in amity with the King, and who be not: who be enemies, and can have no action here; & who in league, and may have Actions perſonall here. * In all treaties, the power of the one party and the other ought to be equall.

19 E.4.ubi ſupra. See the third part of the Inſtit. cap. Treaſon. Verb. League. 2 H.5.cap.6. Hil.14 Eliz.

A league may be broken by leavying of war, or by Ambaſſadour or Herald. Bryan held opinion in 19 E. 4. ubi ſupra, that if all the ſubjects of England would make war with a King in league with the King of England without the aſſent of the King of England, that ſuch a war was no breach of the league. See the ſtatute of 2 H. 5. cap. 6. in the Preamble.

In the Duke of Norf. caſe Hil. 14. Eliz. the queſtion was, whether the Lord Heriſe and other ſubjects of the King of Scots, that without his aſſent had waſted and burnt divers Townes in England, and proclaimed enemies, were enemies in law within the ſtatute of 25 E.3. the league being between the King and the Scot: and reſolved that they were enemies.

Hil.13 Eliz.

And in the Biſhop of Roſſes caſe, Ann. 13 Eliz. the queſtion being, An legatus, qui rebellionem contra principem ad quem legatus concitat, legati privilegiis gaudeat, & non ut hoſtis pœnis ſubjaceat. And it was reſolved that he had loſt the priviledge of an Ambaſſadour, and was ſubject to puniſhment.

Hil.12.Jac.

Samuel Palache affirming himſelfe to be the Subject and Ambaſſadour of Mula Sedan King of Morocco to the States of the united Provinces, to treat and negotiate with them of divers matters between them; and they of the united Provinces having accepted him for an Agent or Legat. And the laſt of June 1611, there being enmity between the King of Morocco and the King of Spaine, the King of Morocco made a Commiſſion to the ſaid Samuel to take Spaniards and their goods. The 25 of October 1613. the King of England gave him Letters of ſafe conduct as a publick Miniſter ſent to the States of the united Provinces. 3 Martii 1613, the States licenſed him to leavie men to furniſh his ſhips, &c. In June 1614 he took a Carvell of the Spaniards at the Canaries

Carvel, or Caravel, is a ſwift Bark.

naries laden with Sugar, and another ſhip there alſo laden with Hides, of the goods of Spaniards; and after, with diſtreſſe of wind, he with the ſaid Prizes was driven to Plimouth, there being at that time league both between England and Spain, and between England and the united Provinces, and wars between Spain and the united Provinces. And againſt this Samuel the Spaniſh Ambaſſadour here in England complained at the Councell Table, and charged him with Piracy. The ſaid Samuel and his company being arreſted, and the goods ſeiſed, the Spaniſh Ambaſſadour prayed that he might proceed againſt him as a Pirat upon the ſaid ſtatute of 28 H. 8. cap. 15. The Lords of the Councell referred the conſideration of this requeſt to the Chiefe Juſtice of England being preſent at the Table, and to the Maſter of the Rols, and Sir Daniel Dun Judge of the Admiralty, to conſider of the caſe and to direct a courſe of juſtice therein indifferently. And the ſaid referrees heard the Councell learned both in the Common and Civill lawes, on both ſides on two ſeveral dayes in this Terme: and after conference between themſelves, and with others, theſe points were reſolved. Firſt, that at this day there could be no Ambaſſadour without Letters of credence of his * Soveraigne, to another that had ſoveraigne authority. Legatus per literas de ſua legatione fidem facere debet, ſi exigantur, & commonitorium, *ſ.* Inſtructiones privat', for the Ambaſſadour himſelfe for his direction.

* Nulli niſi abſoluti principes & qui majeſtatis jura habent, Legatos conſtituere poſſunt.

Secondly, that of ancient time Ambaſſadours were called Oratores.

Jamq; Oratores aderant ex urbe Latina
Velati ramis olei--

Virgil.

And afterwards they were called Legati à legando, Nuntii à nuntiando, and afterwards Ambaſſiatores or Embaſſiotores and ſometimes Agents: for Omnis legatus eſt agens, but Omnis agens is not legatus: For if he be ſent from a King or abſolute Potentate or State to a King or abſolute Potentate or State to treat between them, although he in his Letters of Credence be termed an Agent or Nuntius, yet he is an Ambaſſadour or Legate.

Item 11 Æneid. *Legati reſponſa ferunt--*

Idem 12 Æneid. *Nuntius hæc Idmon Phrygio mea dicta tyranno Haud placitura refer--*

Thirdly, it was reſolved, that Ambaſſadours ought to be kept from all injuries and wrongs, and by the law of all Countries and of all Nations they ought to be ſafe and ſure in every place, in ſo much that it is not lawfull to hurt the Ambaſſadours of our enemies: and herewith agreeth the civill law. And if a baniſhed man be ſent as Ambaſſadour to the place from whence he is baniſhed, he may not be detained or offended there, and this alſo agreeth with the Civill law.

L. fi. F. de Lega. In aut' de ſanctiſſ. § Rerum Col. 9.

The caſe (which we have ſeen reported) in the reign of H. 8. was this: There being amity between King H. 8. and the French King, and enmity between H. 8. and the Pope, * R. Pole a Rebell and Traitor to the King of England flyeth to Rome, whom the Pope being in amity with the French King ſendeth as Ambaſſadour to him: the King of England demandeth his rebell of the French King, notwithſtanding he was ſent as Ambaſſadour, Sed non prævaluit. And it is truely ſaid, whoſoever ſaid it, Quia veritas à quocunque dicitur à Deo eſt, Fuit ſemper etiam apud Gentiles (qui nullam tenebant veræ fidei rationem) inviolabile nomen Nuncii & Legati, etiamſi ab hoſtibus mitterentur ſemper ſalvi, & hodie apud Saracenos & Turcos, à quibuſcunque tutæ deſtinantur legationes & literæ, etiamſi illis ad quos deferantur moleſtæ ſint & iujurioſæ. But if a forein Ambaſſadour being Prorex committeth here any crime, which is contra jus gentium, as Treaſon, Felony, Adultery, or any other crime which is againſt the law of Nations, he loſeth the priviledge and dignity of an Ambaſſadour as unworthy of ſo high a place, and may be puniſhed here as any other private Alien, and not to be remanded to his Soveraigne but of curteſie. And ſo of contracts that be good jure gentium, he muſt anſwer here. But if any thing be malum prohibitum by any Act of Parliament, private law or Cuſtome of this Realme, which is not malum in ſe jure gentium, nor contra jus gentium, an Ambaſſadour reſiding here ſhall not be bound by any of them: but otherwiſe it is of the Subjects of either kingdome, &c.

* See the third part of the Inſtitutes cap. High Treaſon, verb. *Orent fact.* pa. 14. Tempore H. 6.

Paſch. 36 Eliz. Henry de Vale and other Frenchmen imported divers manufactures, as Cloth of Tiſſue, Cawles, Points, &c. Whereupon Tomlinſon and other

Paſch. 36. in Scacc.

19 H. 7. cap. 21. other good Merchants of London exhibited divers informations upon the ſtatute of 19 H. 7. which prohibit the ſame; of whom the Frenchmen complained at the Councell Table, and it was reſolved by the Lord Treaſurer Burghleigh and the whole Councell, that it was no breach of the League between this Kingdome and France, for that in the Articles of the League the lawes of either Kingdome be excepted: and therefore if Tomlinſon the Subject being a French Merchant ſhould trade into France, he muſt obſerve the laws and cuſtomes of France.

Fourthly, it was reſolved, that admit the ſaid Palache was no Ambaſſadour, notwithſtanding becauſe there was enmity between the King of Spaine and the King of Morocco he could not be indicted as a Pirat before Commiſſioners upon the ſaid ſtatute of 28 H. 8. Becauſe that one enemy cannot be a felon for taking of the goods of another enemy. And the words of the ſaid Act be, [That the Commiſſioners by force of the ſaid Act ſhall proceed, as if the offence had been committed upon the land, and according to the courſe of the Common law.]

2 R. 3. fo. 2. See 2 R. 3. by all the Juſtices, that this is no felony, which caſe is in his parts remembred hereafter. For it is very obſervable what the law of England is in that caſe. It was holden by ſome of the Civilians, that albeit the Spaniard could not proceed againſt him criminaliter, upon the ſaid Act of 28 H. 8. yet the goods being in ſolo amici, that is, in the ſoile of the King of England, who was in league with both, that the Spaniard might proceed againſt Palache, civiliter in the Admirall Court: but that was reſolved to the contrary by Popham Chiefe Juſtice, and the whole Court of the Kings Bench Trin. 2 Jac. to be againſt the law of England in that caſe: where the caſe was this, That where the King of England was in league with the King of Spain, and with thoſe of Holland, &c. and there was enmity between the King of Spain and thoſe of Holland, &c. and one of Holland upon the high ſea, in aperto prælio took the goods of a ſubject of Spain, and brought them into England, infra corpus comitatus, and for that the goods were in ſolo amici, the Spaniard whoſe goods were taken libelled for them civiliter in the Admirall Court. It was reſolved by the whole Court of the Kings Bench upon conference and deliberation, that the Spaniard had loſt the property of the goods for ever, and had no remedy for them in England. And relyed principally upon the book in 2 R. 3. ubi ſupra, being of ſo great authority: for by that book, he that will ſue to have reſtitution of goods robbed at ſea, ought by law to prove two things. Firſt, that the Soveraigne of the plaintife was at the time of the taking in amity with the King of England. Secondly, that he that took the goods was at the time of the taking in amity with the Soveraigne of him whoſe goods were taken: for if he which took them was in enmity with the Soveraigne of him whoſe goods were taken, then was it no depredation or robbery, but a lawfull taking, as every enemy might take of another: all which appeareth in the ſaid book. See the ſtatutes of 27 E. 3. and 31 H. 6. well expounded in 2 R. 3. ubi ſupra. Vide 7 E. 4. 14. 13 E. 4. 9. 22 E. 3. fo. 23. concerning this matter. And for that there was enmity between the King of Spain and thoſe of Holland, therefore it could not be depredation, but a lawfull taking. It was alſo reſolved by the Court of the Kings Bench, that the goods ſo taken being within this Realm, *viz.* infra corpus comitatus, in ſolo amici, that if the Spaniard ſue for them civiliter in the Court of the Admiralty, that a Prohibition ſhould be granted, and that it ſhould be determined by the Laws and Statutes of England, and not by the Civill law.

Trin. 2. Jac. coram rege.

27 E. 3. ca. 13. & cap. 17.
31 H. 6. cap. 4.
7 E. 4. fo. 14.
13 E. 4. 9.
22 E. 3. 16, 17.
Regiſt. 129.
F. N. B. 114.
Prohibition Nota.

With this reſolution of the Kings Bench Doctor Taylor an Engliſhman, and Solicitor for the King of Spain, was at the firſt much offended, but when he had taken advice and underſtood the reaſon of the reſolution, he was well ſatisfied.

Lib. 7. fo. 1. 6. If a ſhipwrack be on the ſea, yet if any of the goods come to land within this Realm, the Admirall ſhall not have juriſdiction, but it belongeth to the Common law.

See the third part of the Inſtitutes, cap. Treaſon: what offence it hath been, and what it is at this day to kill a forein Ambaſſadour: and ſee there 3 R. 2. John

John Imperials caſe, Ambaſſadour of Genoa. It appeareth in the Holy Hiſtory, viz. in the Firſt book of the Chronicles, that injury and diſgraces offered to King Davids Ambaſſadours which he ſent to Hanon King of the Moabites, Ad conſolandˈ ei ſupra mortem patris ſui, grandem etiam contumeliam ſuſtinuerunt, &c. was a juſt cauſe of warre by David againſt the Moabites, and was ſeverely revenged, as by the Holy Hiſtory it appeareth. 1 Chro. 19. 2. &c.

There be four kinds of leagues. 1. Fœdus pacis, and that a Chriſtian Prince may have with an Infidell. Si fieri poſſit, quod ex vobis eſt, cum omnibus hominibus pacem habeatis. 2. Fœdus congratulationis ſive conſolationis. And this may a Chriſtian Prince make with an Infidell as David did with Hanon: ubi ſupra. 3. Fœdus commutationis mercium ſive commercii. And this alſo may be made with an Infidell, as King Solomon did with Hiram an Infidell, and Joſua did with the Gibeonites. 4. Fœdus mutui auxilii, and this cannot be done with an Infidell or an Idolater. Jehoſaphat King of Juda, made fœdus mutui auxilii with Achab King of Iſrael, an Idolater: For Achab ſaid to Jehoſaphat, Veni mecum in Ramoth Gilead. Cui ille reſpondet, Ut ego & tu, & icut populus tuus, ſic & populus meus tecum erimus in bello: in which warre Achab was ſlain, and Jehoſaphat was in extreame danger. And after, as the Text ſaith, Reverſus eſt autem Jehoſaphat rex Judæ in domum ſuam pacifice in Jeruſalem, cui occurrit * Jehu filius Hanani, & ait ad illum, Impio præbes auxilium, & hiis qui oderunt Dominum amicitia jungeris, & idcirco iram quidem Domini merebaris. And the laws of England concerning theſe four leagues are as you perceive grounded upon the law of God. Rom 12. 18. Gen. 14. 13. &c. Abrah. cum rege Sodom. Joſua cap. 9. 3 Kings 5. 1. &c. & 34. 35. 2 Chron. 18. Jeremy 15. 4. See 1 Mac. 8. 19. 20. & cap. 10. 2 Chron. 19. 2. & cap. 20. 35. &c. The Prophet of God.

But here ariſeth a queſtion, that ſeeing fœdus pacis, or fœdus commercii may be ſtricken betweene a Chriſtian Prince and an Infidell Pagan & Idolater, and theſe leagues are to be eſtabliſhed by oath, whether the Infidel or Pagan Prince may ſwear in that caſe by falſe gods, ſeeing he thereby offendeth the true God by giving divine worſhip to falſe gods. This very doubt was moved by Publicola to S. Auguſtine, who reſolveth the ſame thus: he that taketh the credit of him that ſweareth by falſe gods not to any evill but good, he doth not joyn himſelfe to that ſinne of ſwearing by Devils, but is partaker with thoſe lawfull leagues wherein the other keepeth his faith and oath. But if a Chriſtian ſhould any way induce another to ſweare by them, herein he ſhould grievouſly ſin. And ſeeing the leagues in theſe caſes are warranted by the word of God, & per praxin ſanctorum in ſacra ſcriptura, all incidents thereunto are permitted: for per praxin ſanctorum the practiſe of holy men in ſcripture, may oftentime be collected how the Commandements in it are to be underſtood, and praxis ſanctorum appeareth before. Aug. Epiſt. 154. *ad Publicolam.* Auguſt. lib. de mendacio c. 2. 15. Praxis ſanctorum inte pres præceptorum.

And it is to be obſerved that of ancient time, and untill latter dayes no Ambaſſador came into this Realm before he had a ſafe conduct. For as no King, &c. can come into this Realm without a license or ſafe conduct, ſo no Prorex, &c. which repreſenteth a Kings perſon can doe it. For ſafe conducts ſee the writs in the Regiſter de ſalvo conductu, and the ſtatutes of 15 H. 6. 18 H. 6. and 20 H. 6. with all incidents thereunto. And King H. 7. that wiſe and politique King would not in all his time ſuffer Lieger Ambaſſadors of any forraine King or Prince within his Realm, nor be any with them, but upon occaſion uſed Ambaſſadors. Rot. Parl 9 H. 6. nu. 12. and long after. See lib. 7. Calvins caſe, *De rege Maine.* Regiſt. fo. 25, 26. 15 H. 6. cap. 3. 18 H. 6. cap 8. 20 H. 6. cap. 1. 8 H. 7. fo. 10. Legate of the Pope ſworne, &c.

* Every Ambaſſador ought to have four qualities, expreſſed in this Verſe. * Foure qualities ought to be in an Ambaſſadour.

Nuncie, ſis verax, tacitus, celer, atque fidelis.

And of him another ſaith.

Fœderis orator, pacis via, terminus iræ.
Semen amicitiæ, belli fuga, litibus hoſtis.

William de la Poole Duke of Suff. by the Commons was charged (amongſt other things) with this, that he procured the King, in his preſence onely without any other of the Councell, to have ſecret conference with the French Ambaſſadors, &c. for the which (amongſt other things) he was baniſhed, &c. as by the Record appeareth. Rot. Pl. 28 H. 6. nu. 28.

Cardinall

1 Decemb. 21 H.8.

Cardinall Wolſey was charged with theſe notable high and grievous offences (amongſt others) viz. that he being the Kings Ambaſſador in France made a treaty with the French King for the Pope, the King not knowing any part thereof nor named in the ſame, and binding the French King to abide his order and award, if any controverſie or doubt ſhould ariſe between the ſaid Pope, and the ſaid French King.

See theſe Articles before *in hac verba*, Cap. Chancery, Artic' 2, 3. 9, 10, 12.

Alſo that the ſaid Lord Cardinall being the Kings Ambaſſador in France ſent a Commiſſion to Sir Gregory de Caſſalis under the Great Seale in the Kings name to conclude a treaty of amity with the Duke of Ferrare without the Kings commandement or warrant, nor the King advertiſed nor made privy to the ſame.

Alſo the ſaid Lord Cardinall taking upon him otherwiſe then a true Privy Counſellor ought to doe, have uſed to have all Ambaſſadors to come firſt to him alone, and to hear their charges and intents, &c.

Alſo the ſaid Lord Cardinall uſed many yeares together not onely to write to all the Kings Ambaſſadors in forraine parts with other Princes in his own name all advertiſements concerning the Kings affaires being in their charge, and in the ſame letters wrote many things of his own mind without the Kings pleaſure known, concealing divers things which had been neceſſary for them to know, but alſo cauſed them to write their advertiſements to him, and of the ſame letters he uſed to conceal, for the compaſſing of his purpoſe, many things both from the Kings Councell and the King himſelfe.

The difference between a League and a Truce is, that a Truce is a ceſſation from warre for a certain time: a League is an abſolute ſtriking of peace.

[a] Of a Truce we have read in anno 19 E. 3. to this effect. Rex poſt initas inducias cum Francorum Rege per mediationem [b] Romani Pontificis, copias ſuas bellicas demum reduxit, poſtea deprehendens præfat' regem Franc' hoſtilia contra ipſum moliri, & nuntios præfati Pontificis ſimulata pace diſſidium fovere, præmiſſa omnia per Literas Patentes exponenda duxit, & bellum cum præfato rege reſumſit.

[a] A Truce. Rot. Franc' 19 E. 3. m. 10. part 1.

[b] See the truce at large, Lib. Par. fo. 5.

[c] A League between King H. 5. his heirs and ſucceſſors, and Sigiſmond King of the Romans his heirs and ſucceſſors Kings of the Romans, and was confirmed by Act of Parliament. The inſtrument whereof is very long, but not ſo long as effectuall and worthy of obſervation.

[c] A League. Rot. Par. 4 H. 5. nu. 14.

[d] It is ſaid in 9 E. 4. that a League made between two Kings (without naming of ſucceſſors) doth not extend to ſucceſſors, although by our law Rex non intermoritur.

[d] 9 E. 4. 2. a.

[e] Juſtice Aſhton is of opinion, that no Ambaſſador ought to be ſent to the Pope, but there may be many preſidents to the contrary, for beſides his ſpirituall jurisdiction he is a Temporall Prince, whereof ſee a preſident among many others, [f] Rot. Pat. 35 E. 3. parte 2. memb. 24. and likewiſe the Pope ſent Ambaſſadors into England, who were ſworn not to attempt any thing prejudiciall to the King or Kingdome.

[e] 39 H. 6. 39.

[f] Rot. Par. 35 E. 3. part. 2. m. 24. Clauſ. 10 H. 4. m. 15. *nuntius papæ*. Rot. Clauſ. 14 H. 3. m. 1. Rot. Clauſ. 12 R. 2. m. Dorſ.

[g] And that we may give ſome taſte of every kind: In times paſt the King of England ſent Ambaſſadors to generall Councels, as taking one example of that ſort for many. Ad concilium Baſileens' ſub Eugenio Papa, quorum deſtinati ſunt per regem Ambaſſiatores & Oratores Epiſcopi Robertus London', Philippus Exoniens', Johannes Roffens', Johannes Baiocens' & Bernardus Aquarens' Edus comes Moriton, Abbates Glaſton' & beatæ Mariæ Eborum, Prior Norwici, Henricus Bromflet miles, (dominus Veſciæ) Thomas Browne legum Doctor, Decanus Sarum, Johannes Colleville miles, & alii. Their authority was in theſe words. Dantes & damus eis & ipſorum majori parti poteſtatem & mandatum tam generale quam ſpeciale nomine noſtro & pro nobis in eodem concilio intereſſendi, tractandi, communicandi, & concludendi tam de hiis quæ reformationem Eccleſiæ univerſalis in capite & in membris, quam in hiis quæ fidei orthodoxæ fulcimentum, regúmque ac principum pacificationem concernere poterunt, nec non de & ſuper pace perpetua, guerrámve abſtinentia inter nos & Carolum

[g] Robert Gilbert Doctor of Divinity. John Langdon Doctor of Divinity died at this Councell. *Nicholaus Abbas Glaſton, Willielm. Abbas beatæ Mariæ Eborum.* The letters of the Pope whereby generall Councels are called, you may read in Mat. Par. Anno dom. 1245. p. 886.

Carolum adverſarium noſtrum de Francia, ac etiam tractandi, communicandi, & appunctuandi, conſentiendi inſuper, & ſi opus fuerit, diſſentiendi hiis quæ juxta deliberationem dicti concilii inibi ſtatui, & ordinari contigerit. Promittentes & promittimus bona fide nos ratum, gratum, & firmum perpetuo habiturum totum & quicquid per dictos Ambaſſiatores, Oratores, & Procuratores noſtros, aut majorem partem eorundem actum, factum, ſeu geſtum fuerit in præmiſſis, & in ſingulis præmiſſorum, & hoc idem cum de & ſuper iis certiorati fuerimus quantum ad nos & Chriſtianum principem attinet, executioni debitæ curabimus demandari. In cujus rei teſtimonium has literas noſtras fieri fecimus patentes. Dat' ſub magni ſigilli noſtri teſtimonio in Palatio noſtro Weſtm 10 die Julii.

Rot Pat. anno 11 H.6. parte 1. m. 10 & 12. & anno 12. part. 2. m. 13.

We have expreſſed this Ambaſſage the more particularly, for that, to this Councell alſo I find that Henry Beauford (**ſon of** John **of Gaunt by Katherin** Swinford) **Biſhop of Winchester and Cardinall of S. Euſeby addreſſed himſelfe and had licenſe to tranſport and carry with him** 20000. **l. of gold and ſilver (mute but moving Ambaſſadors) notwithſtanding the ſtatutes of** 9 E. 3. cap. 1. **and** 5 R. 2. cap. 2. &c. **For the form of a ſafe conduct (which is called** de ſalvo conductu) **ſee the Regiſter. And for the effect and validity thereof, ſee the ſtatutes of** 15 H.6. cap. 3. 18 H.6. cap. 4. 20 H.6. cap. 1.

9 E. 3. ca. 1. 5 R. 2. ca. 2. Safe conduct. Reg. fo. 25, 26.

Recordum & proceſs' contra Petrum de Rival Theſaurarium & Camerarium totius Angliæ & Hiberniæ, & cuſtod' omnium Foreſtarum & omnium Portuum maris, &c. de compoto regi reddito de officiis prædictis & de judicio contra ipſum reddito per defaltam, quia venire recuſavit, niſi ſalvo regis conductu, quod rex denegavit quaſi inſolitum & indebitum.

Anno 18 H. 3.

What reward Legats have had in former times you may read Rot. Liberat. 11 H. 3. m. 13. Rot. Clauſ. 11 H. 3. m. 11. in Dorſ. Rot. Liberat. 3 E. 1. m. 9. Eodem Rot. 1 E. 1. m. 2. Rot. Alman. 11 E. 3. per totum Rotulum.

See Beda **in his Hiſtory of England,** Lib. 1. cap. 11, **hereafter** Cap. 75. **Of** Scotland, **in fine, the danger of unwiſe and incertain Leagues.**

CAP. XXVII.

The Court of the Iuſtices of Aſsiſe, and *Niſi Prius*.

Glanvil lib.13. cap.32,33.&c. Bract.lib.4.fo. 164.b. Fritton fo.106,b. 112.118. Fleta li.4.cap.1. & 5. Mirror ca.2. §.16. Stat.Walliæ in Vet.Mag.Cart. 2 part.fo.12. 26 Aſſ.P.24.

For the writ of Aſſiſe, whereof the Iuſtices take their name; in all ancient Authors, it is called Aſſiſa novæ diſſeiſinæ, or Petit brief de novel diſſeiſin. Of which writ Bracton ſaith: Recognitio Aſſiſæ novæ diſſeiſinæ multis vigiliis excogitata & inventa fuit recuperandæ poſſeſſionis gratia, ut per ſummariam cognitionem abſque magna juris ſolennitate, quaſi per compendium, negotium terminetur. And the Mirror ſaith, that for expedition of juſtice, and auoiding of delayes, it was ordained by Ranulph de Glanvill; but I find the writ more ancient, as it appeareth in 26 aſſ.pl.24.

At the Common law Aſſiſes were not taken but either in * Bank, or before Iuſtices in Eire, and this was a great delay to the Plaintif, and a great moleſtation and veration of the recognitors of the Aſſiſe. For remedy whereof, it is enacted by the ſtatute of Magna Carta, Quod recognitiones de nova diſſeiſina, & de morte anteceſſoris non capiantur niſi in ſuis propriis comitatibus, & hoc modo nos ſi extra regnum fuere Capitales Juſticiarii noſtri, mittent Juſticiarios noſtros per unumquemque comitatum ſemel in anno, qui, &c. capiant comitatibus illis Aſſiſas prædictas. By force of this Act, theſe three concluſions are to be obſerued. Firſt, that no Aſſiſe can be returnable in the Kings Bench, or Common Bench, unleſſe the diſſeiſin be done in the County where the Benches ſit reſpectively, or if both Benches ſit in one County, then the Plaintif hath election to make it returnable in which Bench he will. Secondly, that the Iuſtices of both Benches in that caſe haue jurisdiction originally and ordinary without any Patent. Thirdly, that upon the ſaid Act of Magna Carta Letters Patents to Iuſtices of Aſſiſe were framed for the taking of Aſſiſes in the proper Counties in theſe words.

Mirror ca.2. §.16. Stat.Walliæ in Vet.Mag.Cart. 2 part.fo.12. 26 Aſſ.P.24. * F.N.B.177.Ref. See the 1 part of the Inſt.Sect. 442. Mag.Cart.cap.30. 39 H.6.19.b. mord. When Iuſtices of Aſſiſe by Patent firſt began.

† Rex, &c. dilectis & fidelibus ſuis R.M. uni Juſtic' ſuorum de Banco, & I.L. uni Juſtic' ſuorum ad placita coram nobis tenend' aſſign̄ Salutem. Sciatis quod conſtituimus vos Juſticiarios noſtros una cum hiis quos vobis aſſociaverimus, ad omnes [a] Aſſiſas, [b] Jurat', [c] certificat' coram quibuſcunque Juſtic' tam per diverſa brevia domini Johannis nuper regis Angliæ patris noſtri, quam per diverſa brevia noſtra in Com̄ noſtris Southt', Wiltef. Dorſ. Somerſet', Devon̄ & Cornub. ac in civitate Exon̄ arranian' capiend'. Et ideo vobis mandamus, quod ad certos dies & loca quos vos ad hoc provideritis, Aſſis', Jurat' & certificat' illas capiatis; [d] Facturi inde quod ad juſtitiam pertinet ſecundum legem, & conſuetudinem regni noſtri Angliæ. Salvis nobis amerciamentis inde proveniēn. Mandavimus enim Vicecomitibus noſtris com̄ & civitat' prædict', quod ad certos dies & loca quos eis ſcire faciatis Aſſiſ', Jurat' & certificat' illas una cum brevibus origin̄ & omnibus aliis ea tangēn coram vobis venire fac'. In cujus rei teſtimonium, &c.

† Dominus Rex, &c. præcepit, quod de cætero aſſignentur Octo Juſticiarii circumſpecti & diſcreti ad Aſſiſas, Jurat' & certificat' capiend' per totum regnum Angl.æ, viz and divideth the Realm into eight parts, and to every part aſſigneth two Juſtices.

† The Patent of the Iuſtice of Aſſiſe.

[a] *Juſtic' noſtros ad Aſſiſas.* Hereunto belong Commiſſions of aſſociat', writs of admittance, and of *ſi non omnes, &c.* F.N.B. 177. Regiſter: and a writ to the Sheriff to bring before them *omnia brevia Aſſis' Jurat' & Certificat', &c.*

[b] *Jurat'* when the recognitors are turned *in juratam.* 19 E.2.Aſſ.418. 29 Aſſ.p.78,&c.

[c] Certificat. hereof you may read in F.N.B. and the Regiſter.

[d] Nota.

[e] W.2.ca.25.

[f] W.2.ca.30. Vid.4 E.3 cap 2.

[g] Rot.Par. 21 E.1. Rot.3. De Iuſticiariis aſſignatis.

But

But divers Acts of Parliament have given unto Justices of Assise authority in many cases.

[b] Per Iestatut' de finibus ca.3. Justiciarii ad Assisas capiendas assignati deliberent Gaolas in com' illis tam infra libertates quam extra de prisonariis quibuscunque. [c] Appeals of murder, robbery and rape may be commenced before Justices of Assise. [d] Power given to Justices of Assise to try the appeals of Approvers. [e] Justiciarii ad Assisas capiend' assignati non compellant Juratores dicere practise. [f] Justices of Assise shall enquire for non-returning, and false returns of Sheriffs.

[g] Justices of Assise may hear and determine of Conspirators, false Informers, and wicked procurers of dozens, Enquests and Juries at the complaint of any without writ, and without delay, and of confederacies and Champerties and maintainers, bearers, and alliances by bond, &c. [h] Of defaults of Sheriffs, Escheators, Bailifs, and other Officers.

[i] Justices of Assise may enquire of defaults, &c. of punishment of Victuallers, &c. which sell at unreasonable prices.

[k] They have power to hear and determine riding and going armed, &c. and to punish Justices of Peace, Sheriffs, Bailifs, and others for not doing their office in that case.

[l] They may hear and determine treason in counterfaiting of money, &c. [m] They shall do execution of the statute of 13 H.3. of riots done in their presence upon pain of an hundred pound. [n] And by the statute of 2 H.5. Commissions shall be awarded to enquire of the default of Justices of Assise, and of Justices of Peace in that behalf.

[o] They shall enquire of, hear, and determine all offences contrary to the statute of 23 H.6. concerning Sheriffs, Under-Sheriffs, and their Clerks, Coroners, Stewards of Franchises, Bailifs, and keepers of prisons for extortion, and for letting to bail such as were not bailable, or for denying of bail to them that ought to be bailed, &c.

[p] Justices of Assise shall take bail of him that is acquitted of murder within the year to answer to the appeal of the party, 5 Eliz. cap. 5. Of Informers. 5 Eliz. cap. 4. Of Labourers.

[q] Justices of Assise, of Gaol-Delivery, and of the Peace, shall enquire of the default of Coroners.

[r] Justices of Assise, &c. shall enquire of false making of Leather. [s] Of amending of high ways. [t] Of hunters in Parks. [u] Of unlawfull taking of Fishes. [x] Of forgery of false deeds. [y] Against deceipt in Linnen-cloth. [z] Against perjury. [a] Of usury and many other things.

[b] Justices of Assise twice in the year ought to proclaim the statute of 32 H.8. and other statutes against unlawfull maintenance, champerty, imbracery, and unlawfull retenyers. [c] They ought to proclaime the statute of unlawfull games in their circuit. See the Custumer of Normandy, cap. 19.

[d] Now concerning Justices of Nisi prius, they were first instituted by the statute of W.2. of times, joyned to the Common Bench, and Kings Bench: and their authority is annexed to the Justices of Assise, and is by force of a judiciall writ, and therefore we have joyned them under one title. And this appeareth in the judiciall writ of Nisi prius, which is,

[b] 27 E.1. Stat. de Finibus cap.3. To deliver Gaols.
[c] 22 E.4. 19.
[d] Stat. de Appellatis. an. 28 E.1.
[e] W.2.cap. 30.
[f] W.2.cap. 39.
2 E.3. ca. 5.
[g] Artic. sup. Car. 28 E.1. 4 E.3. c.11. 7 R.2.c.15. Regist. 186. 188. 4 E.3.ca. 12. Of Maiors and Baylifs, *que ne ferthe vines*.
[h] 20 E.3.ca.6.
[i] 23 E.3. cap.6.
[k] 2 E.3.ca.3. de Northampton. 1 R.2.ca. . Of unlawfull maintenance.
[l] 3 H.5.ca.7.
[m] 13 H.4 cap.7.
[n] 2 H.5.cap.8.
[o] 23 H.6.ca.10. 33 H.8.ca.9. for shooting.
[p] 3 H.7.cap.1.
[q] 1 H.8.8.ca.7.
[r] 18 El. cap.9.
[s] 18 El.cap.10.
[t] 5 El.cap.3.
[u] 5 El.cap.5.
[x] 5 El. cap.
[y] 1 El. cap.14.
[z] 5 El. ca.9.
[a] 13 El. cap.8.
[b] 32 H.8.ca.
[c] 33 H.8.ca.9.
[d] W.2.c.30. See the 2 par. of the Inst. the exposition of this Act. vid. Fleta l.4.c.5. Vid. Hil. 32 E.3. rot. 5. for the authority of Justices of Nisi prius, in libro meo.fo. 54. b. the Pl. begun, *Et auxint en Nisi prius grand de vent Stonf.*

¶ *The writ of Nisi prius.*

Rex vicecomiti Salutem. Præcipimus tibi quod venire fac' coram Justiciariis nostris apud Westm' in Octab. Sancti Michaelis, vel coram Justiciariis nostris ad Assisas in com' tuo per formam statuti nostri inde provis' capiend' assignatis, si prius die lunæ prox' ante festum, &c. apud, &c. venerint 12. *tam milites quam alios, &c.*

And by the said Act the Justices of Nisi prius have power to give judgment in Assise of Darrein Presentment and Quare Impedit. Reg. judic. 48. 75 W.2.ca.30. 6 E.6.Dier 77.

R. 2. ca. 7.
7

By the statute of 7 R. 2. Nisi prius shall be granted as well in the Exchequer as elsewhere.

18 El. ca. 12.

Of issues joyned in the Kings Bench, Common Bench, and Exchequer, the Chief Justices, or Chief Baron, or in their absences two other Justices or Barons of the said severall Courts, as Justices of Nisi prius for the County of Midd. within the Terme, or four days after shall severally try, &c. and

9 El. Dier 261.

that Commissions, and writs of Nisi prius shall be awarded, &c. It is to be observed that there is but a transcript of the Record sent to the Justices of Nisi prius.

27 E. 1. de finibus. F. N. B. 24 l. c. Statut. de York. 12 E. 2. ca. 3. & 4. 2 E. 3. ca. 16. & 4 E. 3. cap. 2. 14 E. 3. ca. 16.

By the statute of 27 E. 1. de Finibus ca. 4. It is provided, Quod inquisitiones & recognitiones capiantur tempore vacationis coram aliquo Justiciario de utroque Banco, coram quibus placitum deductum fuerit. See the statutes of York, 2 E. 3. cap. 16. 4 E. 3. ca. 2. and the statute of 14 E. 3. cap. 16. which statute doth provide that Nisi prius may be taken in every plea reall and personall before two, so that one be Justice of one of the Benches, or the Chief Baron or Serjeant sworn, without any regard where the plea depended, and this standeth yet at this day. Vid. 42 E. 3. cap. 11. 19 H. 6. fol. 47. 33 H. 6. fol. 14. 16 H. 7. fol. 14. 5 Mariæ Dier fol. 163.

Rot. Claus. 10 E. 2. m. 10.

Concordatum fuit per totum concilium regis, quod nullus Vicecomes aut Coronator fiat Justiciarius ad Assisas capiend', Gaolas deliberand', transgress' audiend' & terminand', seu ad aliquod aliud officium Justic' faciend', eo quod debent esse intendentes aliis Justiciariis. Which Act is declaratory of the Common law, for that (as by the reason yeelded in the Act it appeareth) these offices be incompatible, the one being attendant unto, and within the controlment of the other.

F. N. B. 240. c. Stanf. 156. Nisi prius in case of felony and treason. 4 E. 3. cap. 11.

14 H. 6. cap. 1. Justices of Nisi prius have power in all cases of felony and treason to give judgment as well where the prisoner is acquitted, as where he is attainted, and to award execution.

[a] Where the King is a party, a Nisi prius may be granted, if the Kings Attorny assent unto it:

[a] 24 E. 3. f. 23. Rot. Par. 37 E. 3. nu. 18. F. N. B. 24 l. a.

In Appeal of murder, robbery, and rape brought in the Kings Bench, if the parties be at issue a Nisi prius may be granted before Justices of Assise. 25 E. 3. 30. 14 E. 3. Nisi prius 16. 22 E. 4. 19. 21 H. 7. 36. 9 El. Dier 261. 42 E. 3. c. 11. 8 H. 5. 6.

[b] 10 E. 4. fo. 14. 22 E. 4. 18. 3 Mar. Dier 120, 121. 131.

[b] But it is to be observed, that if the Appellee be acquited before Justices of Nisi prius, they have power to acquit, &c. and give judgement, as is aforesaid.

[c] See the 2. part of the Inst. upon this Act of W. 2. cap. 12.

[c] They may also enquire and judge of the abbettors and dammages by the statute of W. 2. cap. 12. and not by the said Act of 14 H. 6. And so it is if the Appeal be brought before the Justices of Assise, they have also power to enquire and judge, Ut supra.

[d] 27 E. 1. stat. de finibus. cap. 4. Regist. 186.

[d] These Justices of Nisi prius were instituted for two causes, viz. 1. Propter intolerabilem jacturam Juratorum, & in exonerationem Juratorum. 2. Ad celerem justitiam in ea parte exhibendam.

W. 2. cap. 30.

Inquisitiones & Jurat' in placito terræ capiend' quæ magnæ non sunt examinationis, capiantur in patria, &c.

Regist. 186.

And hereupon a prohibition is grantable to Justices of Assise, Quod non caperent in patria inquisitiones quæ magna indigent examinatione.

14 E. 3. ass. Br. 413 & tit. Ass. Fitzh. 110.

By the originall institution of Justices of Assises and of Nisi prius, the tryall should be before two at the least, and it were much for the advancement of justice and right to have the law put in due execution, for plus vident oculi, quam oculus, and specially in Pleas of the Crown concerning the life of man, in regard whereof they shall be worthy of greater allowance.

Dier Manuscript. Hil. 11 Eliz. 28 ass. p. 3.

Before the Justices of Assise in pays a forain plea, viz. Villenage was pleaded, for tryall whereof the Record was remooved into the Common Bench, and there a Venire fac' was awarded, and returne, servie, and a Habeas corpus with a Nisi prius was prayed. And it was objected that the issue was not joyned in Bank, nor judgment to be given there, and yet in the end the prayer was granted, as in

in a * Certificate, upon an Assise a Nisi prius shall be granted: [a] And so it is upon a forain Voucher, Receipt shall be granted, and a tryall by a Nisi prius had.

[b] The Justice of Nisi prius may grant a Tales de circumstantibus, either when but one or more appeare of the principall pannell, or where eleven doe appear: and all the Jury may be of the Tales de circumstantibus, as it was upon a Tales at the Common law.

[c] Where the King is party, a Nisi prius is grantable for the King, but not for the party without assent of the Kings Attorny, and so are the books to be intended.

[d] In Attaint the Plaintif craved a Nisi prius, and because one of the Petit Jury was prisoner in Newgate, and came in ward and pleaded, and was remanded, and if a Nisi prius should be granted he should lose his challenges, the Court denyed to [e] grant any Nisi prius, otherwise a Nisi prius may be granted in an Attaint.

[f] In trespasse between the Duke of Exeter and the Lord Cromwell' the Counceil of the Duke moved for a Nisi prius, and for that the Duke was a Prepotent Prince in that Country, and the Venire fac' being returned, there was a great rout in the Hall, so as if a Nisi prius should be granted great mischief might ensue, therefore no Nisi prius was granted.

Here you may read of the writs of Assise and of Nisi prius in our books, that which hath been said concerning the jurisdiction may suffice. It is commonly called a writ of Nisi prius, but the words of the writ are Si prius &c. And albeit the authority of Justices of Assise (as it hath appeared) hath by Act of Parliament been exceedingly enlarged both in dignity and multitude of causes, yet they retain their first and originall name, albeit Assises are in these daies very rarely taken before them. See in the Chapter of Justices of Peace powers and authorities lately granted to Justices of Assise, and Justices of Nisi prius.

* 7 H.4.45. 8 E.4.16. F. N. B.183 h.

[a] 18 E.3.1. 49 E.3.21 3 H.4.18.

[b] 35 H.8. cap.6. 23 El.Dier. 376. 4 & 5 Ph. & Mar. cap.7. 14. El.c.9. 18 El. cap.12. Vi.. 8. Eliz. Dier 145.

[c] 25 E.3.39. 18 E.3.58. 14 E.3. Nisi prius 16.24 E.3. 23. 21 H.7. 34. F. N. B. 140. Stanf. pl. cor. 156.a.b.

[d] 44 E.3.fo.2. 44 ass. p.20. 8 H.4.23. 21 E.3. 17 6. ass. p.7.

[e] 15 E.3. Nisi prius. 22 simile. 21 E.3.ibidem 21

[f] 32 H.6.9. 22 E.3.16.F.N.B. 241.2. Dier 4 El. 215.

Cap.

CAP. XXVIII.

Iustices of *Oier & Terminer.*

The authority of Iustices of Oier and Terminer is by Commission. Of Commissions of Oier & Terminer there be two sorts, one generall, so called because it is generall, in respect of the persons, the offences, and the places where the offences are committed, the which Commission followeth in these words.

For generall Commissions, see 42 Ass pl. 5. 2 R. 2. Cor. 47. Pl. com 390. *Countee de Leic' case*

*Elizabeth dei gratia Angliæ, Franciæ, & Hiberniæ Regina, fidei defensor, &c. Charissimis consanguineis suis Willielmo Marchioni Winton, Henrico Comiti South', &c. ac dilectis & fidelibus suis Rogero Manwood uni Justic' suorum de Banco, Iohanni Iefferay uni Iustic' ad placita coram nobis tenend' assign', Iohanni Arundell militi, &c. Iohanni S. Iohn, Humf. Walrond, William Pool, Petro Edgecombe, Thomæ Morton, &c. Salutem. Sciatis quod assignavimus vos & tres vestrum, quorum aliquem vestrum vos præfat' Rogerum Manwood & Iohannem Iefferay unum esse volumus Iusticiarios nostros ad inquirendum per sacramentum proborum & legalium hominum de com' nostris South' Wiltes. Dorset, Somerset, Devon. & Cornub. & eorum quolibet ac aliis viis, modis, & mediis quibus melius sciveritis, aut poteritis tam infra libertates quam extra, per quos rei veritas melius sciri poterit de quibuscunque proditionibus, misprisionibus proditionum, insurrectionibus, rebellionibus, murdris, feloniis, homicidiis, interfectionibus, burglariis, raptibus mulierum, congregationibus, & conventiculis illicitis, verborum prolationibus, coadjutationibus, misprisionibus, confœderationibus, falsis allegantiis, transgressionibus, riotis, routis, retentionibus, escapiis, contemptibus, falsitatibus, negligentiis, concelamentis, manutenentiis, oppressionibus, cambipartiis, deceptionibus, & * aliis malefactis, offensis, & injuriis quibuscunque, nec non accessar' eorundem infra com' prædict' & eorum quemlibet, tam infra libertates, quam extra per quoscunque & qualitercunque habit', fact', perpetrat' sive commiss'. Et per quos vel per quem, cui vel quibus, quando, qualiter, & quomodo, ac de aliis articulis & circumstantiis præmiss. & eorum aliquod vel aliqua qualitercunque concernen. Et ad easdem proditiones & alia præmissa (hac vice) audiend. & terminand. secundum legem & consuetudinem regni nostri Angliæ. Et ideo vobis mandamus quod ad certos dies & loca quos vos vel tres vestrum, quorum aliquem vestrum ex vobis præfat. Rogerum Manwood & Iohannem Iefferay unum esse volumus, ad hoc provideritis diligenter super præmissis faciatis inquisitiones, & præmissa omnia & singula audiatis & terminetis, ac ea faciatis & expleatis in forma prædicta,* * *facturi inde quod ad Iustitiam pertinet secundum legem & consuetudinem regni nostri Angliæ. Salvis nobis amerciamentis & aliis ad nos inde spectantibus. Mandavimus enim Vicecomitibus nostris com' præd ct. quod ad certos dies & loca, quos vos vel tres vestrum, quorum aliquem ivestrum ex vobis præfat. Rogerum Manwood & Iohannem Iefferay unum esse volumus, eis scire feceritis venire fac' coram vobis, vel tribus vestrum, quorum aliquem*

Hereupon they are called Iustices of Oier and Terminer.

* Nota, these generall words.

* Nota.

aliquem vestrum vobis præfat' Rogerum Manwood & Johannem Fefferay unum esse volumus, tot & tales probos & legales homines de ballivis suis tam infra libertates, quam extra, per quos rei veritas melius sciri poterit & inquiri. In cujus rei testimonium has literas nostras fieri fecimus patentes. Teste me ipsa apud Westm' 27 die Junii Anno regni nostri decimo octavo.

2 Particular Commissions of Oier and Terminer so called in respect of the persons of the offences, or of the places, whereof you shall find five precedents in the Register: *1. Against the Bishop of Winchester and his Ministers. 2. De nave fracta, if the goods ought to be taken for Wreck. 3. Of divers oppressions, &c. extortions, &c. by the Kings Ministers. 4. Of Oier and Terminer for the Prior of Daventry. And 5. For the King in time of vacation, which you may read there.

[a] Concerning Commissions of Oier and Terminer Ten Conclusions are to be observed. 1. That Oiers and Terminers shall not be granted, but before the Justices of the one Bench or the other, or the Justices errant, and that for great or horrible trespasses, of the Kings especiall grace, according to the statute in the time of his [b] Grandfather.

[c] And in the Register there is a Supersedeas, Quia non enormis transgressio, which word [enormis] is in the statute of W.2. ubi sup. [d] To Commissioners of Oier and Terminer a Writ of Supersedeas was delivered, Quia enormis transgressio non est, ideo supersedeant, for it was not but for cutting down of Trees. [e] And afterward a Writ of Procedendo under the Great Seal of later date was delivered to them to proceed secundum legem & consuetudinem Angliæ non obstante aliquo mandato, &c. by vertue whereof, notwithstanding the former Writ, they did proceed by advice of all the Justices. For a Writ of Supersedeas is one thing, and an absolute repeale or countermand of the Commission it selfe is another. A Supersedeas is but to stay, or forbeare the proceedings, * that is, super advisamentum sedere, and is not mes un furceise de advisement. And such may the cutting down of trees be, as it may be enormis transgressio, and therefore notwithstanding a Supersedeas the cause may proceed by a Writ of Procedendo. But after an absolute repeale or countermand by the King of the Commission it selfe, the Commissioners cannot proceed after by force of any Procedendo, but there must be a new Commission.

The second Conclusion is, that Commissions are like to the Kings Writs, such are to be allowed which have warrant of law and continuall allowance in courts of Justice. For all Commissions of new invention are against law untill they have allowance by Act of Parliament. [f] Commissions of novell inquiries are declared to be void: [g] Commissions to allay Weights and Measures (being of new invention) are declared to be void, [h] that such Commissions should not be after granted. So as a Commission is a delegation by warrant of an Act of Parliament, or of the Common law, whereby jurisdiction, power, or authority is conferred to others. Sapientis Judicis est cogitare tantum sibi esse permissum, quantum commissum & creditum. And it is a good rule for all Commissioners to hold the like, and ever to keep themselves within their Commission.

The Commons do petition, that certain Commissions lately sent to Cities for the making of certain Boats and Ballingers being done without assent of Parliament, might be repealed. The King doth answer, That after conference with the Lords, reasonable answer should be made. And that these Commissions took no effect, appeareth in this, That no further complaint was thereof made, and no such Commission was ever after granted.

At the petition of the Commons, the King granted that one Bennet Wilman, who was imprisoned to answer before the Constable and Marshall of England, should be tried according to the common laws of this Realm, notwithstanding any Commission to the contrary. And thereupon a Writ was accordingly directed to the Justices of the Kings Bench, as there it appeareth. Of these kinds many

[a] Regist. 125, 126 127.
F.N.B. 110. 111.
For particular commissions see 42 Ass. pl. 12. 34 Ass. p. 8. 29 E. 3. 30, 31. Rot. Claus. 18 H. 3. m. 15 de Petro de Rival.
[b] 2 E. 3. cap. 2. 34 E. 3. cap. 1. To be named by the Court & not the party.
[c] See the statute of 42 E. 3. cap. 4. which extends to Enquiries. 4 H. 4. cap. 9. Vide Rot. Parl. 50 E. 3. nu. 51. for Commissions of inquiry what persons ought to be named: so note a diversity between Commissions of Enquiry, and of Oier and Terminer.
[d] W. 2. 13 E. 1. cap. 29.
[e] Regist. 124, 125. 2 E. 3 cap. 2.
[f] 12 Ass. p. 21. Vide Br. com. 12. & Oier & Terminer. 4.
[g] Regist. 124, 125.
* Supersed. unde.
[h] 18 E. 3 cap. 1.
[i] 18 E. 3. cap. 4.

Rot. Par. 2 H. 4. nu. 22.

Rot. Parl. 5 H. 4. nu. 39.

Vid. 42. Ass. p. 5.

many more authorities might be cited, but let us return to our Justices of Oier and Terminer.

42 Ass.p.12. Vi.F.N.B. 110.b. Regist.125.&c.

In the reign of E.3. the Justices were so carefull, that no innovation should creep in concerning Commissions of Oier and Terminer, that certain Justices having their authority by Writ, where they ought to have had it by Commission, though it were of the same and words that the legall Commission ought to be, John Knivett Chief Justice by the advice of all the Judges resolved, that the said Writ was contra legem. And where divers Indictments were before them found against T.S. the same, and all that was done by colour of that Writ was damned.

3 Mar. Br. Commissions 23.

The third conclusion is, that Justices of Oier and Terminer cannot proceed upon any Indictment, but upon Indictments taken before themselves, for their authority is, Ad inquirend, audiend, & terminand.

The fourth conclusion, that Justices of Oier and Terminer may upon an Indictment found proceed the same day against the party indicted. But against this there seems to be great authority: For in Kelwey fo. 159. b. it is thus said. Mem que en breife de Oier & Terminer, P. 9 H. 8. sur le insurrection in Londres il fuit determine clerement per touts Justices Dengliterre, que Justices D'oier & Terminer ne puir inquire un jour, & mesme le jour determine, nient pluis que Justices de peace; mes Justices de Gaol delivery & Justices in Eire poien bient. It may be that he that set down this case took it upon trust, for it agreeth in effect totidem verbis with the Chronicle in 9 H.8. fo.843. and it is erroneous in divers main points. 1. That the Oier and Terminer was by Writ, where it was and ought to be by Commission, as hath been said. 2. That Justices of Oier and Terminer cannot enquire one day, and determine in the same day, which without question they may doe: for proof whereof we will cite some few Records in stead of many.

Vide 29 Ass.33.

Hil.2 H.4.Rot.4. Thomas Marks Bishop of Carlile before Commissioners of Oier and Terminer was indicted, tried and adjudged all in one day, for High Treason.

1 H.8. Sir Rich. Empsons case. Northampton. Die Lunæ post festum Sancti Michaelis, Anno 1 H.8. before Fisher, Brudnell, Palmes, &c. Commissioners of Oier and Terminer, Sir Richard Empson was indicted of High Treason and tried all in one day. And we desirous to see the entry, upon not guilty pleaded, it is thus: Ideo inter dict' dominum regem & dict' Rich. Empson militem in instant' diem ad horam primam post meridiem, &c. apud castrum de Northampton venerunt, &c. qui nec, &c. ad recognosc', &c. Ad quos quidem diem, horam, & castrum de Northampt' venit coram præfat' Justic' præd' Rich. Empson, &c.

2 Dec' Anno 3 E. 6. at Westm' before Richard Lister, Edward Montague, Roger Cholmeley, Edmond Merton, William Portman, and Humfrey Browne, and other Commissioners of Oier and Terminer, Robert Bell was indicted of High Treason and tried the same day. 10 Dec' Anno 3 E. 6. before Sir William Portman and other Justices of Oier and Terminer at Reading in the County of Berks Thomas Bonham was indicted of High Treason and tried the same day. 4 Augusti 10 Eliz. John Felton was before Commissioners of Oier and Terminer in London indicted of High Treason, and tried the same day by the advice of all the Judges of England. [a] Nota, the award in the Roll by the Justices of Oier and Terminer to the Sheriffe to returne a Jury is not sufficient; but there ought to be a precept to the Sheriffe, under the Seals of the Commissioners for the returning of a Jury, but otherwise it is in the Kings Bench.

[a] And with this constant experience agreeth 4 H.5.tit.Enquest 55.

[b] The third error in the said case of 9 H. 8. that Justices of Peace cannot inquire and try the same day, which without question they may, for they are speciall Justices of Oier and Terminer: and wherefore Justices of Oier and Terminer should not try the same day, as well as Justices of Gaole-delivery, and Justices in Eire, no sound reason can be given.

[b] 22 E.3.cor.44. holden for no law.

[c] The fifth conclusion is, that if any offence be prohibited by any statute, and name not in what Court it shall be punished; or if the statute appoint that it shall be punished in any Court of Record: In both these cases it may be heard and determined before Justices of Oier and Terminer. And so it seemeth to me

[c] Vide *Lestatut de* 5 E.6.cap.14. Of Forestallers, Ingrossers, and Regrators. 33 H.8.cap.9. Of unlawfull games. 7 Eliz. Dier 236. See many statutes wherein Justices of Oier and Terminer are expressly named.

it

the statute appoint the penalty to be recovered in any of the Kings Courts of Record, according to the opinion of Catlyn, Sanders, and Whiddon; for the Court of Oier and Terminer is the Kings Court of Record.

The sixth conclusion is, that the King may make a Commission of Association directed to others to joyn with the Justices of Oier and Terminer, and a Writ of Admittance to the Justices of Oier and Terminer, to admit the others into their society, which Writ is close. There is also a Writ of Si non omnes directed to the Justices of Oier and Terminer and to their Associates: the formes of all which you may read in the Register ubi supra, and in F. N. B. ubi supra. And in all these Commissions and Writs, the Justices are directed with this Rule, Facturi quod ad justitiam pertinet secundum legem & consuetudinem Angliæ, which is a true mark of a lawfull Commission.

The seventh. If the Justices sit by force of the Commission, and do not adjourne the Commission, it is determined. Commissions Br. 12.

The eight Justices of Oier and Terminer, or Justices of Peace, cannot assigne a Coroner to an appriover; for it is not within the Commission of either of them, but Justices of Gaol-delivery may do it. 9 H. 4. coron. 457. Stanf. pl. co. 143. c.

The ninth. Justices of Oier and Terminer shall send their Records and Proces determined, and put in execution to the Exchequer at Mich. every year to be delivered there to the Treasurer and Chamberlains, &c. to keep them in the Treasury. 9 E. 3. cap. 5.

The tenth. None of these Commissioners, or of Assise, Gaole-delivery, or of the Peace, or other of the Kings Commissioners are countermanded by any new Commission, unlesse the new Commission be shewed unto them for so many as it is shewed unto; or that it be proclaimed in the County, or that the new Commissioners do sit and keep their Sessions by force of the new Commission, the former Commission is countermanded. 34 Ass. p. 8. L. 5 E. 4. fo. 12. 10 E. 4. fol 7. 20 H. 7. 8. Kelwey 116. Br. Commiss. 6. 19 Eliz. Dier 355 Vi. infra pag. 169.

The statute of 2 & 3 Ph. & M. cap. 18 for Cities or Towns Corporate being no Counties, but it extendeth not to Commissioners of Oier and Terminer.

And a right profitable statute is made concerning this matter, *viz.* That no Proces or suit before any Justices of Assise, Gaole-delivery, Oier and Terminer, Justices of the Peace, or * other of the Kings Commissioners, shall not in any wise be discontinued by the making or publishing of any new Commission or Association, or by altering of the names of any of the said Justices or Commissioners, but that the new Justices and Commissioners may proceed in every behalfe, as if the old Justices and Commissioners had still remained and continued not altered. 1 E. 6. cap. 7.

* Note, the generall words.

CAP. XXIX.

The Courts of Speciall Justices of Oier and Terminer, of and concerning, 1. Purveyours, 2. Misdemeanours of Villaines, &c. 3. Sums of money collected for houses of Correction, &c. 4. Colledges, Hospitals, and Charitable uses.

And first of Purveyors.

36 E.3.ca.4. Of Purveyours

This Court is raised by the Statute of 36 H. 3. whereby it is enacted, That Commissions shall be made to two good men and lawfull of every County, and the third to be of the Kings house. So that if any of the three come not, the two shall proceed to enquire of the behaviour and acts of the said buyers and takers, and how much the said buyers have taken and bought; and how much carriage: and to heare and determine the contempts, outrages, and trespasses in that behalfe, as well at the Kings suit, as of every man that will complaine of them.

Buyers of Victuall, &c. Takers of Carrage.

These Commissions are to be granted ex merito justitiæ, and cannot be denied. And it is to be observed, that the action or suit given by the said Act is not popular; for either the King only is to have it, or the subject only that will complaine.

And for better information to be made to the said Justices of the things aforesaid, the Steward, Treasurer, and Controller of the two Houses, (*viz.* of the King and Queen) at every Quarter or Halfe year, shall certifie into the Chancery the parcels taken in every Towne, and of every person; and the Chancelor shall send the said Certificate to the Justices which shall be so assigned. And that this Act extend and hold place as well against the Purveyours of the Great Horses of the said two Houses, as against the buyers or takers before named.

2. *Concerning misdemeanours, &c. of Villains.*

1 R.2.cap.6. See the Statute of 1 R. 2. cap. 6.

3. *Of and for Sums of money collected for Houses of Correction, or for the poore, &c.*

39 Eliz. cap.4. 1 Iac.cap.7. This Court is raised by the statute of 39 Eliz. cap.4. as by the same appeareth, wherein this is to be observed, That their proceedings, judgements, and executions shall remain good and availeable in law, without any redresse to be had by suit in any other Court.

See the Second part of the Institutes the exposition of these statutes.

4. *Concerning Colledges, Hospitals, or Almes-houses, or for charitable and lawfull purposes and uses.*

39 Eliz.cap.6. It is lawfull for the Lord Chancelour or Lord Keeper of the Great Seale,

Seale, and for the Chancelour of the Duchy of Lancaſter (for lands within the County Palatine of Lancaſter) to award Commiſſions under the Great Seale, or Seal of the County to the Biſhop of the Dioces & his Chancelour, and to other perſons of * good and ſound behaviour, to enquire by the oaths of twelve lawfull men, &c. as by all other good and lawfull means of all and ſingular Colledges, Hoſpitals, and other places, founded or ordained for the Charitable reliefe of poore, aged, and impotent people, maimed ſouldiers, Schooles of learning, Orphans, or for ſuch other good, charitable and lawfull purpoſes and intents. And alſo of Lands, Tenements, and Hereditaments, Leaſes, Goods and Chattels given or appointed for the like lawfull and charable uſes. As alſo for reparation of Highwayes, of Bridges, and Seabanks, for maintenance of Free-Schooles and Poore Scholars, and of Orphans and fatherleſſe children, and ſuch like good and lawfull charitable uſes. And to enquire of the abuſes and miſdemeanours, miſ-imployments, falſities, defrauding the truſts, alienations, and miſgovernments, &c. And after ſuch inquiry made upon hearing and examining thereof to ſet downe ſuch orders, judgements, and decrees as the ſaid good and charitable uſes may be fully obſerved in full, ample, and moſt liberall ſort, &c. Which orders, judgements, and decrees (not being contrary to the orders, ſtatutes, and decrees of the Donors or Founders) ſhall ſtand * firme and good, according to the tenor and purport thereof: which Orders, Judgements, and Decrees are to be certified under the Seals of the Commiſſioners reſpectively, either into the Chancery of England, or of the County Palatine of Lancaſter.

* No perſon intereſſed, &c. to be a Commiſſioner.

Colledges in both Univerſities, of Weſtm. Eaton, or Winchester, and Cathedrall Churches, &c. are excepted.

It extends not to lands in Cities or Towns Corporate where there is a ſpeciall Governour, &c.

Nor to any Colledge, Hoſpitall, or Freeſchoole, which have ſpeciall Viſitors, &c.

But this exception extends not to Leaſes, Goods or Chattels.

* The party grieved may complain to the Lord Chancelour or Lord Keeper, or to the Chancelour of the ſaid Duchy, for their redreſſe therein, &c. and they have power to judge, &c. according to equity.

It is to be obſerved that when any Act of Parliament doth authoriſe the Lord Chancelour or Lord Keeper to make or grant any Commiſſion under the Great Seale, that he may make or grant the ſame without any further warrant, becauſe the King is party to the Act of Parliament, and there cannot be a greater warrant to the Lord Chancelour, &c. then the Act of Parliament.

CAP. XXX.

Justices of Gaole-delivery.

Their Authority is by Commission in these words.

The Commissiõ of Gaol-delivery.
Note, they are called the Kings Justices.
* Their Commission extends only to them that are in prison.
[a] Nota.

Elizabeth, &c. Dilectis & fidelibus suis A B. C D. *&c. Salutem. Sciatis quod constituimus vos, tres, & duos vestrum, quorum aliquem vestrum vos præfat' A B. &c. unum esse volumus, Justiciarios nostros ad Gaolam nostram castri nostri de C. de * prison' in ea exist' hac vice deliberand. Et ideo vobis mandamus quod ad certum diem quem vos, tres vel duo vestrum (quorum vos prefat' A B. &c. unum esse volumus) ad hoc provideritis, conveniatis apud castrum prædict' ad gaolam illam deliberand', [a] facturi inde quod ad justiciam pertinet secundum legem & consuetudinem regni nostri Angliæ. Salvis nobis amerciamentis & aliis ad nos inde spectantibus. Mandavimus enim Vic' nostro Com' nostri M. quod ad certum diem quem vos, tres, vel duo vestrum (quorum vos præfat' A B. & C D. unum esse volumus) ei scire feceritis, omnes prisones ejusdem gaolæ & eorum attachiamenta coram vobis, tribus, vel duobus vestrum, (quorum aliquem vestrum ex vobis præfat. A B. & C D. unum esse volumus) ibidem venire fac. In cujus rei testimonium has literas nostras fieri fecimus patentes. Teste, &c.*

See the second part of the Instit. stat. de Glouc' ca. 9.
[b] 4 E. 3. cap. 2. 17 R. 2. cap. 9.
[c] Thrice in the year, and oftner if need be.
[d] Nota, few but effectuall words.
[e] 4 E. 3. cap. 2.
[f] 4 E. 3. cap. 2. 3 Mar. Br. Commissions. 23. 2 R. 3. Coron. 47.
4 H. 5. Enquest 55.
2 R. 3. Coron. 47.
Pasch. 29 Eliz. coram Rege inter Apharry & Morgan in Appeal. 9 H. 7. 9. 2 R. 3. Coron. 47.

[b] **By the law of the land,** ne homines diu detineantur in prisona, **but that they might receive** plenam & celerem justitiam, **this Commission was instituted, and by this Commission Gaols ought to be delivered** [c] **thrice in the year, and oftner if need be.**

Their authority is by this Commission, which consisteth in [d] **few words.** Constituimus vos Justiciarios nostros ad Gaolam nostram castri nostri de C de prisonibus in ea existentibus hac vice deliberand. [e] **These Justices ought to be,** Bone gents & sages auters que des places, &c.

Upon this authority and by statutes given unto them, thirteen conclusions do follow.

1. [f] **Justices of Gaole-delivery may arraign any man that is in prison in that Gaole upon an indictment of Felony, Trespasse, &c. before Justices of Peace, though it were not found before themselves, which (as hath been said) Justices of Oier and Terminer cannot do. Justices of Peace shall deliver their Indictments to the Justices of Gaole delivery.**

2. **They shall take a panell of a Jury returned by the Sheriffe, without making any precept to him, as Justices of Oier and Terminer (as hath been said) ought to make. And the reason of the difference is, because a generall commandment is made to the Sheriffe by the Justices of Gaole delivery to return Juries against their comming: but if they have a speciall Commission, otherwise it is by Hankeford.**

3. **They may deliver suspects for felony, &c. by Proclamation, against whom there is no sufficient evidence produced to the Great Inquest to indict them, &c. which Justices of Oier and Terminer, or Justices of Peace cannot do.**

4. **They may inquire and take indictments of felony, &c. of prisoners before them, & proceed upon them. And so was it resolved in an appeal of murder brought by Apharry against Morgan, who pleaded that he was auterfoitz indicted and convicted of the same felony, and had his Clergy before Justices of Goale delivery, and pleaded over to the felony (& the plea allowed.) And so may Justices of Oier**

and

and Terminer doe, which is to be obſerved by the iudicious Reader, for both of them have authority to enquire, heare, and determine of ſuch as be priſoners in the Gaole: and in that caſe they have a concurrent authority.

5 If a man be indicted before Iuſtices of the Peace, and thereupon outlawed, and is taken and committed to priſon, the Iuſtices of Gaole delivery may award execution of this priſoner. 15 H.7.5. b.

6. They may aſſigne a Coroner to an Appriover, and make Proces againſt the Appellee in a forein County. Stat. de App. llat. 28 E. 1.

7. * They may puniſh thoſe that let men to baile or mainprize, which are not bailable by law, or ſuffer them to eſcape. Stanf. Pl. cor. 143. c. * 27 E. 1 ſtat. De finibus cap. 3.

By the Statute of 1 E. 6. it is provided in theſe words. 4 E. 3. cap. 2. 1 & 2 Ph. & Mar. cap. 13. 1 E. 6. cap. 7.

And be it, &c. That in all caſes where any perſon or perſons heretofore have been, or hereafter ſhall be found guilty of any manner of Treaſon, Murder, Manſlaughter, Rape, or other felony whatſoever; for the which judgement of death ſhould or may enſue, and ſhall be repried to priſon without judgement at that time given againſt him, her, or them ſo found guilty, that thoſe perſons, that at any time hereafter ſhall by the Kings Letters Patents be aſſigned Iuſtices to deliver the Gaole where any ſuch perſon or perſons found guilty ſhall remaine; ſhall have full power and authority to give judgement of death againſt ſuch perſon ſo found guilty and repried, as the ſame Iuſtices before whom ſuch perſon or perſons was or were found guilty might have done, if their Commiſſion of Gaole delivery had remained and continued in full force and ſtrength. Treaſon, &c.

8. Here by the judgement of the whole Parliament this concluſion doth follow, that Iuſtices of Gaole delivery, according to the generality of the words of their Commiſſion, may deliver the Gaole of priſoners committed for High Treaſon, which we prefer before any private opinion, eſpecially concluding with a Quere. 27 E. 1. de finib. cap. 3. See 28 E. 1. De Appellatis, the recitall.

9. [a] Iuſtices of Gaole delivery ſhall ſend their Records and Proces determined, and put in execution to the Exchequer at Michaelmas every year to be deliuered there to the Treaſurer and Chamberlains, &c. to keep them in the Treaſury. V. 2 R. 3. cor. 47. Caſe de Colinborne. Stanf. pl. cor. 57, 58, & 182. a.

10. [b] Iuſtices of Gaol delivery may receive Appeals of robbery and murder by Bill, but the Appellees muſt be in priſon before them. [a] 9 E. 3. cap. 5. 14 H. 7. fo. 15. b. [b] 13 H. 4. fo. 10. Dier fo. 99.

11. [c] To theſe Iuſtices Commiſſions of Aſſociation, and Writs of admittance, and Si non omnes (as hath been ſaid of Iuſtices of Oier and Terminer) are directed. 3 H. 7. cap. 1. Stanf. pl. cor.

12. [d] Iuſtices of Gaole delivery ſhall keep their Seſſions in the principall and chief Towns of the Counties where the Shire Courts of the ſame Counties be holden. [c] 2 E. 3. cap. 2. [d] 6 R. 2. cap. 5.

13. By the ſtatute of 2 & 3 Ph. & Mar. it is provided, That all Commiſſions of the * Peace or Gaole delivery to any City or Towne Corporate not being a County of it ſelfe, ſhall ſtand and remaine, the granting of any like Commiſſion of the Peace or Gaol delivery in any Shire, Lathe, Rape, Riding, or Wapentake, being of a later date, to the contrary notwithſtanding. 2 & 3. Ph. M. cap. 18. * 11 H. 6. cap. 6.

See in the Chapter of Oier and Terminer Concluſione 9. more concerning Iuſtices of Gaole delivery. Vide 44 Aſſ. pl. 21.

See authorities lately granted to Iuſtices of Gaole delivery in the Chapter next enſuing of Iuſtices of Peace.

CAP.

CAP. XXXI.

Justices of Peace.

SIr Anthony Fitz-Herbert, one of the Justices of the Court of Common Pleas, and divers others have written of the Jurisdiction and power of Justices of the Peace, both in the Court of the Sessions of Peace, as without; to whose labours I refer the Reader.

And it is such a form of subordinate government for the tranquillity and quiet of the Realm, as no part of the Christian world hath the like, if the same be duly executed.

To the former Treatises are necessary to be added certain Acts of Parliament made in the 21 year of our late Soveraigne Lord King James, and certain Caveats, Additions, and Observations necessary to be known. De pace violata; vide int' leges Alveredi, cap. 36. Edwardi cap. 6.

Before the Conquest, *De pace violata.* 4 H. 7. cap. 12.

But as a Preface to all that shall be said of the office and duty of Justices of Peace, we will begin with that which is enacted by the statute of 4 H. 7. as a necessary caveat to all Justices of Peace, *viz.* The King considereth that a great part of the wealth and prosperity of the land standeth in that, that his subjects may live in surety under his peace in their bodies & goods: and that the husbandry of this land may increase and be upholden, which must be had by due execution of Laws & Ordinances, chargeth and commandeth the Justices of the Peace to endevour them to do and execute the tenor of their Commission, the said Laws and Ordinances ordained for subduing of the premises, as they will stand in love and favour of his Grace, and in avoiding the pains that be ordained, if they do the contrary. And over that he chargeth and commandeth, that every man, what degree or condition that he be of, that let them in word or deed to execute their said authority in any manner forme aboveſaid, that they shew it to his Grace; and if they do it not, and it come to his knowledge by other then by them, they shall not be in his favour, but taken as men out of credence, and be put out of Commission for ever. And over this he chargeth and commandeth all manner of men, as well the poore as the rich, which be to him all one in due ministration of Justice, that is hurt or grieved in any thing, that the said Justice of peace may heare, determine, or execute in any wise, that he so grieved make his complaint to the Justice of the Peace that next dwelleth unto him, or to any of his fellowes, and desire a remedy: and if then he have no remedy, if it be nigh such time as his Justices of Assises come into that Shire, that then he so grieved shew his complaint to the same Justices; and if he then have no remedy, or if the complaint be made long afore the comming of the Justices of Assise, then he so grieved come to the Kings Highnesse or to his Chancelour for the time being, and shew his griefe: and his said Highnesse then shall send for the said Justice to know the cause why his said subjects be not eased, and his laws executed. Whereupon if he finde any of them in default of executing of his laws in these premises, according to his high

high commandement, he ſhall doe to him ſo offending to be put out of the Commiſſion, and furthermore to be puniſhed according to his demerits. And over that his ſaid Highneſſe ſhall not let for any favour, affection, coſt, charge, nor none other cauſe, but that he ſhall ſee his lawes to have plaine and true execution, and his ſubjects to live in ſurety of their lands, bodies and goods according to his ſaid laws, and the ſaid miſchiefs to be avoided, that his ſubjects may increaſe in wealth and proſperity to the pleaſure of God.

And where the words of the ſaid Act be: And further to be puniſhed according to his demerits. These words are ſo to be underſtood, that he ſhall be puniſhed in an ordinary courſe of juſtice by way of indictment upon this Act, for his contempt, &c. and not by any abſolute power, as hath been often obſerved.

It is to be obſerved, that when Juſtice Fitzherbert and ſome others did write of the authority of Juſtices of Peace, the Commiſſion of the Peace ſtood overburdened and incumbred with divers ſtatutes, ſome whereof were before, and ſome ſince repealed: and with ſome, whereas there was none ſuch, and ſtuffed with many vaine and unneceſſary repetitions, and many other corruptions crept into it by miſtaking of Clerks, &c. For amendment and correction whereof (being a matter of ſo great importance) Sir Chriſtopher Wray Chief Juſtice of England, Mich. 32 & 33 Eliz. aſſembled all the Judges of England, and upon peruſall had of the former Commiſſion of the Peace, and upon due conſideration had thereupon, and often conferences between themſelves, they reſolved upon a reformation of the former, with divers additions and alterations both in matter and method, as it now ſtandeth at this day: and there needeth yet another reformation of that alſo; for ſince that time divers ſtatutes then in force have been repealed, and divers have expired: as for example, All the ſtatutes of Liveries inquirable by Juſtices of Peace are repealed by the ſtatute of 3 Car. cap. 4. ſaving the ſtatute of 1 R. 2. cap. 7. inquirable before Juſtices of Aſſiſe, Vide ſupra pa. 159. Alſo the ſtatute of 27 H. 8. cap. 22. that the owner of any ſcite or priorie, &c. of any diſſolved religious houſe under the value of 200 l. per annum, for the keeping of honeſt and continuall houſhold thereupon, and inquirable by Juſtices of Peace is repealed by 21 Jac. Regis cap. 28. And the ſtatute of 13 R. 2. cap. 8. and 4 H. 4. cap. 25. for taking by any Inholders in gain above a halfe penny in a buſhell of Oats over the common price in the market, and inquirable by Juſtices of Peace be alſo repealed by the ſaid Act of 21 Jac. Likewiſe the ſtatute of 39 El. cap. 2. concerning husbandry and tillage, which being but a probationer for a time, was diſcontinued 21 Jac. And the ſtatutes concerning houſes of husbandry and tillage in 4 H. 7. 7 H. 8. 27 H. 8. 5 E. 6. and 5 Eliz. are all repealed by 21 Jac. and divers others, &c.

Compare the old with the new Commiſſion, and the reformations, additions and alterations will appear.

Mich. 32 & 33 El. the Commiſſion of the Peace reformed by all the Judges of England.

13 H. 4. cap. 3.
8 H. 6. cap. 4.
8 E. ca. 2. &c.
27 H. 8. ca. 22.
5 El. ca. 2.

13 R. 2. ca. 8.
4 H. 4. ca. 25.

39 El. ca. 2.
4 H. 7. ca. 19.
7 H. 8. ca. 1.
27 H. 8. cap. 22.
5 E. 6. cap. 5.
5 El. ca. 2.

It is a good rule therefore for all Judges and Juſtices whatſoever, that have juriſdiction by any ſtatute, which at the firſt was temporary, or for a time, to conſider well before they give judgement, whether that ſtatute have been continued or made perpetuall: and if it were at the firſt made perpetuall, whether it be not repealed or altered by any latter ſtatute. Erudimini qui judicatis terram. See in the Second part of the Inſtitutes the Expoſition upon the ſtatute of 22 H. 8. ca. 5.

Juſtices of Peace may inquire if Eſtreats be not ſhewed by Sheriffs, &c. to the party indebted and totted. A neceſſary law for the eaſe of the ſubject.

42 E. 3. cap. 9.
W. 1. cap. 19.
7 H. 4. cap. 3.

Concerning the nomination of Juſtices of Peace, ſee the ſtatutes of 12 R. 2. cap. 2. 2 H. 5. ſtat. 2. cap. 1. 18 H. 6. ca. 11. whereunto you may add, that before all theſe another Act not in print was made in 28 E. 3. as well for their nomination, as how and by whom they ſhall be diſcharged. Certain it is that he, that is named in the Commiſſion of Peace under the Great Seal to be a Juſtice of Peace, is a lawfull Juſtice of Peace.

Rot. Par. 28 E. 3. nu. 17.
37 E. 3. nu. 18.
50 E. 3 nu. 64.

At

21 Jac. Reg. ca. 4.

At the Parliament holden Anno 21 Jac. Regis, **there was an excellent law made, entituled,** An Act for the ease of the Subject concerning Informations upon penall statutes, **which Act for that it principally concerneth Justices of Peace, is here inserted** in hæc verba **as followeth.**

This was the ancient and prudent policy of Parliaments (as before it hath appeared) that justice might be administred & tried in their proper Counties and not to be drawn up to the Courts at Westm' for the causes in this preamble expressed.

Whereas the offences against divers and sundry pœnall laws and statutes of the Realme may better, and with more ease and lesse charge to the subject, be commenced, sued, informed against, prosecuted and tried in the Counties where such offences shall be committed. And whereas the poore Commons of this Realme are grievously charged, troubled, vexed, molested, and disturbed by divers [a] troublesome persons, commonly called Relators, Informers, and Promoters, by prosecuting and enforcing them to appear in his Majesties Courts at Westminster, and to answer offences supposed by them to be committed against the said pœnall laws and statutes, or else to compound with them for the same.

[a] Of this kind of men it was formerly truly said, *Hoc genus hominum semper vitabitur, & tamen semper in civitate retinebitur.* But this law consisting of seven parts remedied all the former inconveniences and the abuses of these troublesome persons.

1. For remedy whereof be it enacted by the Authority of this present Parliament, that all offences hereafter to be committed against any penall statute, for which any common Informer or Promoter may lawfully ground any popular action, bill, plaint, suit or information [b] before Justices of Assise, Justices of Nisi prius, or Gaol-Delivery, Justices of Oier and Terminer, or Iustices of the Peace in their generall, or quarter Sessions, shall after the end of this present Session of Parliament be commenced, sued, prosecuted, tried, recovered and determined by way of action, plaint, bill, information or indictment before Justices of Assise, Justices of Nisi prius, Iustices of Oier and Terminer, and Iustices of Gaol-Delivery, or before the Iustices of Peace of every County, City, Borough, or Town corporate, and liberty, [c] having power to enquire of, heare and determine the same within this Realme of England or dominion of Wales, wherein such offences shall be committed, in any of the Courts, places of Judicature, or liberties aforesaid respectively, only at the choice of the parties, which shall or will commence suit, or prosecute for the same, [d] and not elsewhere, save only in the said Counties, or places usuall for those Counties or any of them.

[b] Nota before Justices of
1 Assise.
2 Nisi prius.
3 Gaol-delivery.
4 Oier & Term.
5 Peace.
But the greatest care for the due execution of this Act will belong to the Justices of Peace, whereof there be many learned in the laws.

[c] Note this Act giveth Justices of Peace no new power in cases where former Acts gave them none, and so of the rest of the Justices here named.

[d] So as they cannot be commenced, &c. in any of the Kings Courts at Westminster.

[e] By this branch processe of Outlawry doth lye upon every popular action, a necessary clause for execution of Justice.

2. [e] And that like processe upon every popular action, bill, plaint, information or suit, to be commenced, or sued, or prosecuted after the end of this present Session of Parliament by force of, or according to the purport of this Act, be had and awarded to all intents and purposes as in an action of trespasse *vi & armis* at the Common law.

[f] This clause was added that the Kings Majesty should be bound expressly by this Act, that no information in the Courts at Westminster should be exhibited by the Kings Attorney generall, by any common Informer, or other person whatsoever. Note the generality of these words.

3. [f] And that all and all manner of informations, actions, bils,

plaints,

plaints, and ſuits whatſoever hereafter to be commenced, ſued, proſecuted, or awarded either by the Atturny Generall of his Majeſty, his heirs, or ſucceſſors for the time being, or by any Officer or Officers whatſoever for the time being, or by any common Informer, or other perſon whatſoever in any of his Majeſties Courts at Weſtminſter, for or concerning any of the offences, penalties or forfeitures aforeſaid, ſhall be void, and of none effect, any law, cuſtome, or uſage to the contrary thereof notwithſtanding.

4 And be it further enacted by the Authority aforeſaid, that in all Informations to be exhibited, and in all bils, courts, plaints, and declarations in any action or ſuit to be commenced againſt any perſon or perſons, either by, or on the behalfe of the King or any other for or concerning any offence committed, or to be committed againſt any penall ſtatute, the offence [b] ſhall be laid and alleadged to have been committed in the ſaid County where ſuch offence in truth was committed, and not elſewhere. And if the Defendant to any ſuch Information, action or ſuit, pleadeth that he oweth nothing, or that he is not guilty, and the Plaintif or Informer in ſuch information, action or ſuit upon evidence to the Jury that ſhall try the iſſue, ſhall not both prove the offence laid in the ſaid Information, action or ſuit, and that the ſame offence was committed in that County, then the Defendant and Defendants ſhall be found not guilty.

[a] Note the King expreſſly named.
[b] Shall be laid in the proper County.
This clauſe is but in affirmance of the true inſtitution of the Common law, for *vicini viciniora facta præſumuntur ſcire*, and for theſe Informers they were beſt truſted where they were leaſt known. This is a very beneficiall clauſe for every Defendant to take hold of.

5. And be it further enacted by the Authority aforeſaid, that no Officer or Miniſter in any [i] Court of Record ſhall receive, file, or enter of Record any Information, bill, or plaint, count, or declaration, grounded upon the ſaid penall ſtatutes or any of them, which before by this Act are appointed to be heard and determined in their proper Counties, untill the Informer, or Relator hath firſt taken a [k] corporall oath before ſome of the Judges of that Court, that the offence or offences laid in ſuch information, action, ſuit or plaint, was or were not committed in any other County, then where by the ſaid information, bill, plaint, count or declaration the ſame is, or are ſuppoſed to have been committed, and he beleeveth in his conſcience the offence was committed [l] within a year before the information or ſuit within the ſame County, where the ſaid information or ſuit was commenced, the ſame oath to be there entred of Record.

[i] That is in any of the Courts before Juſtices of Aſſiſe, and other Juſtices named in the firſt part of this Act.
[k] The Informer muſt take an oath before his information, &c. be received. A beneficiall clauſe alſo for the Defendant.
[l] Note within a year before the information.

6. And be it alſo enacted by the Authority aforeſaid, that if any Information, ſuit, or action ſhall be brought, or exhibited againſt any perſon or perſons for any offence committed, or to be committed againſt the forme of any penall law either by, or on the behalfe of the King, or by any other, or on the behalfe of the King and any other, it ſhall be lawfull for ſuch Defendants to plead the ge-

Vid 7 Jac. ca. 5. 21 Jac. cap. 12.

The reaſons of this clauſe were, 1. For that in the Courts afore, ſpecially before Juſtices of peace, there are not ſuch skilfull Prothonotaries and Clerks for good pleading as were in the Kings Courts at Weſtminſter; and therefore the makers of this law provided that the Defendant might plead the generall iſſue. 2. For the eaſe and benefit of the ſubject, great charges growing by ſpeciall pleading. 3. For avoiding of demurrers upon ſtrict and nice points of pleading. 4. For avoiding of writs of Error, which often are brought in reſpect of ſpeciall pleading.

nerall iſſue, that they are not guilty, or that they owe nothing, and to give ſuch ſpeciall matter in evidence to the Jury that ſhall try the ſame, which matter being pleaded had been a good and ſufficient matter in law, to have diſcharged the ſaid Defendant or Defendants againſt the ſaid information, ſuit, or action; and the ſaid matter ſhall be then as available to him or them to all intents and purpoſes as if he, or they had ſufficiently pleaded, ſet forth, or alleadged the ſame matter in bar, or diſcharge of ſuch information, ſuit, or action.

Provided alwayes that this Act or any clauſe contained therein ſhall not extend to any information, ſuit or action, grounded upon any law or ſtatute made againſt Popiſh Recuſants, or for, or concerning Popiſh recuſancy, or againſt thoſe that ſhall not frequent the Church and hear divine ſervice, nor to any information, ſuit, or action for maintenance, champerty, or buying of titles, nor to any ſuit, or information grounded upon the ſtatute made in the firſt year of the reign of our Soveraign Lord the King, of a Subſidy granted to the King, of Tunnage, Poundage, Wool, &c. nor for, or concerning the concealing or defrauding the King his heires or ſucceſſors of any Cuſtome, Tunnage, Poundage, Subſidy, Impoſt, or Priſage, or for tranſporting of gold, ſilver, Ordinance, Powder, ſhot, munition of all ſorts, Wool, Woolfels, or Leather, but that ſuch offence may be laid or alleadged to be in * any County at the pleaſure of any Informer, any thing in this Act to the contrary notwithſtanding.

* This proviſo referreth only to the County, &c. So as no information, &c. grounded upon any of the ſtatutes in this proviſo mentioned can be commenced, &c. in any of the Kings Courts at Weſtminſter, but before the Iuſtices of Aſſiſe, Iuſtices of Niſi prius, or Gaol-delivery, Iuſtices of Oier and Terminer, or Iuſtices of Peace.

There was another miſchief which lay heavy upon the ſubject, whereof advantage might be taken by any Informer, which was not provided for by this Act, viz. divers former ſtatutes, which in reſpect of the alteration of times

4 H. 7. cap. 8. **lay as ſnares upon the people, and at this day could not be performed. For example: That a yard of broad cloth of the fineſt making ſcarlet grayned, or other cloth grayned, what colour ſoever it be, ſhould not be ſold above the value of 16 s. a broad yard, &c. Which Act and many other Acts of Parliament of like nature, and other obſolete laws to a very great number were at this Par-**

21 Iac. ca. 18. **liament utterly repealed, and made void. We adviſe therefore the Juſtice of Peace (for to him we principally direct our ſpeech, though it concern the reſt of the Juſtices before named) ſeriouſly to read over that Act, where all thoſe obſolete laws are particularly mentioned and repealed, and therefore no information, &c. can be commenced, &c. upon any of them.**

At the ſame Parliament alſo Anno 21 Jac. Regis, **an other good and profitable law was made concerning Juſtices of peace and others, the tenor whereof is as followeth.**

21 Iac. cap. 12. The Title. *An Act to enlarge and make perpetuall the Act made for eaſe in pleading againſt troubleſome and contentious ſuits proſecuted againſt Juſtices of the Peace, Maiors, Conſtables, and certain others his Majeſties officers for the lawfull execution of their office, made in the 7. year of his Majeſties moſt happy reign.*

Whereas an Act intituled, an Act for eaſe in pleading againſt troubleſome and contentious ſuites proſecuted againſt Juſtices of the Peace, Maiors,

Maiors, Constables, and certain others his Majesties Officers for the lawfull execution of their office made in the seventh year of his Majesties most happy reign of England, was made to continue but for seven years, and from thence to the end of the next Parliament, after the said seven years, which by experience hath since been found to be a good and profitable law: Be it therefore enacted by the Kings most excellent Majesty, the Lords Spirituall and Temporall, and the Commons in this present Parliament assembled, and by the authority of the same, that the said Act shall from and after the end of this present Session of Parliament be perpetuall, and have continuance for ever.

7 Jac. regis ca. 5. That Act extended to
1 Justices of Peace.
2 Maiors or Bailifs of Cities or towns corporate.
3 Headborows.
4 Portreves.
5 Constables.
6 Tithingmen.
7 Collectors of Subsidies and Fifteenths, and not to any Officer not named in that Act.

Made perpetuall

And be it further enacted by the Authority aforesaid, that all Churchwardens, and all persons called Sworn-men executing the office of the Churchwardens, and all Overseers of the poor, and all others, which in their aid or assistance, or by their commandment shall doe any thing touching or concerning his or their office, or offices, shall hereafter be enabled to receive and have such benefit and help by vertue of the said Act, to all intents, constructions and purposes, as if they had been specially named therein.

This Act of 21 Jacobi extendeth to
1. Churchwardens
2. All persons called Sworn-men executing the office of Churchwardens.
3. All Overseers of the poor.
4. All others in their aid and assistance, and not to any other Officer or person not named in this Act.

And whereas notwithstanding the said statute, the Plaintif is at liberty to lay his action which he shall bring against any Justice of Peace, or other Officer in any forain County, at his choice, which hath proved very inconvenient unto sundry of the Officers, and persons aforesaid, that have been impleaded by some contentious, and troublesome persons in Countries far remote from their places of habitations.

Be it therefore further enacted by the Authority aforesaid, that if any action, bill, plaint, or suit upon the case, trespasse, battery, or false imprisonment shall be brought after the end of this present Session of Parliament against any Justice of Peace, Maior, or Baylif of City, or town corporate, Headborow, Portreve, Constable, Tythingman, Collector of Subsidy or Fifteens, Churchwardens, and persons called Sworn-men executing the office of Churchwarden, or Overseer of the poor, and their Deputies, or any of them, or any other which in their aid, or assistance, or by their commandment, shall do any thing touching or concerning his or their office or offices, for or concerning any matter, cause or thing by them or any of them done by vertue or reason of their or any of their office or offices, that the said action, bil, plaint, or suit shall be laid within the County where the trespasse or fact shall be done and committed, & not elsewhere. And that it shall be lawful to & for all and every person, and persons aforesaid, to plead thereunto the generall issue, that he or they are not guilty, and to give such speciall matter in evidence to the Iury which shall try the same, as in or by the said former Act is limited or declared. And that if upon the tryal of any such action, bill, or suit, or the Plaintif or Plaintifs therein shall

This branch extendeth to
1 Actions upon the case.
2 Trespasse.
3 Battery.
4 False imprisonment.

The actions aforesaid shall be laid in the proper County.

To plead the generall issue.

not prove to the Jury which ſhall try the ſame, that the treſpaſſe, battery, impriſonment, or other fact, or cauſe of his, her, or their ſuch action, bill, plaint, or ſuit was, or were had, made, committed, or done within the County where ſuch action, bill, plaint, or ſuit ſhall be laid, That then in every ſuch caſe, the Jury which ſhall try the ſame ſhall find the Defendant and Defendants in every ſuch action, bill, plaint, or ſuit, not guilty, without having any regard or reſpect to any evidence given by the Plaintif or Plaintifs therein touching the treſpaſſe, battery, impriſonment, or other cauſe, for which the ſame action, bill, plaint, or ſuit is, or ſhall be brought: and if the verdict ſhall paſſe with the Defendant or Defendants in any ſuch action, bill, plaint, or ſuit, or the Plaintif or Plaintifs therein become nonſuit, or ſuffer any diſcontinuance thereof, that in every ſuch caſe the Defendant or Defendants ſhall have ſuch double coſts, and all other advantages and remedies, as in and by the ſaid former Act is limited, directed, or provided.

The Plaintif upon the evidence muſt prove that the cauſe of action was done or had in the proper County.

See alſo another Act the ſame Parliament, anno 21 Jacobi Regis, intituled,

An Act to inable Judges and Juſtices of the Peace to give reſtitution of poſſeſſion in certain caſes.

21 Jac. c. 15.

Be it enacted by the Authority of this preſent Parliament, that ſuch Judges, Juſtices, or Juſtice of the Peace, as by reaſon of any Act or Acts of Parliament now in force are authoriſed, and inabled upon inquiry to give reſtitution of poſſeſſion unto tenants of any eſtate of freehold, of their lands, or tenements which ſhall be entred upon with force, or from them withholden by force, ſhall by reaſon of this preſent Act have the like and the ſame authority and ability from henceforth (upon indictment of ſuch forcible entries, or forcible withholdings before them duly found) to give like reſtitution of poſſeſſion unto Tenants for tearm of years, Tenants by copy of Court-rol, Guardians by Knights ſervice, Tenants by Elegit, Statute merchant and ſtaple of lands, or tenements by them ſo holden, which ſhall be entred upon by force, or holden from them by force.

1 Judges, or Juſtices of the Kings Bench. 4 H. 7. 18. b. 7 E. 4. 18. 2. Juſtices of the Peace. 8 H. 6. cap. 9. Lib. 9. f. 118. b. 2 H. 8. Kelw. 159. Not Juſtices of Oier and Terminer, nor any other Juſtice. In ſtead of *diſſeiſivit* which was formerly in the Indictment, now it ſhall be ſaid, *ejecit, expulit, & amovit*, or *detinuit*. 4. Tenant by Elegit.

See 8 H. 6. cap. 9. & 31 El. cap. 11.

This Act extendeth to 1. Tenant for years. 2. Tenant by copy, &c. 3. *Guardens en Chivalry.* 4. Tenant by Elegit. 5. By Statute merchant. 6. By Statute ſtaple, which no former Act extended unto.

In Termino Paſch. 6 E. 1. Coram rege prima fuit inſtitutio Iuſticiariorum pro pace conſervanda.

Rot. Parl. 18 E. 1. fo. 3. nu. 41. Homines de Cheſerſhire qui onerati ſunt de ſervientibus pacis ſuſtentandis, petunt exonerari de oneribus ſtatut Winton, &c. *Rex non habet conſilium mutandi conſuetudines, nec ſtatuta ſua revocandi.*

Dorſ. Clauſ. An. 8 R. 2. m. 5.

The Lord Chancelor and others of the Priby Councell doe remove divers Juſtices of Peace for that they were retaining to the Archbiſhop, &c.

Rot. Par. 3 R. 2. nu. 39. *Regula.*

See a profitable and good law for Juſtices of Peace in the Parliament Roll, and not in print.

But let us returne to the duty of a Juſtice of Peace, for Melius eſt recurrere quam male currere.

One or more Juſtice or Juſtices of Peace cannot make a warrant upon a bare ſurmiſe to break any mans houſe to ſearch for a Felon, or for ſtolne goods, for they being created by Act of Parliament have no ſuch authority granted unto them by any Act of Parliament: and it ſhould be full of inconvenience, that

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it should be in the power of any Justice of Peace being a Judge of Record, upon a bare suggestion to break the house of any person of what state, quality, or degree soever, and at what time soever, either in the day or night upon such surmises. But if the party suspected be indicted, then the Sheriff by force of the Kings writ may demand the party indicted to be delivered; and that not done, he may break open the house, &c. and apprehend the Felon, for that the Kings writ is a Non omittas propter aliquam libertatem: but if the Kings processe be in debt, trespasse, &c. at the suit of a party, there the Sheriff by force of the Kings writ cannot breake open the house of the subject. And so is the book in 13 E 4. fo. 9. which saith; It was holden, that for felony or suspicion of felony a man may break the house to take the Felon, and two reasons are yeelded in the book. 1. Because it is for the Common weale to take them. 2. Because the King hath an interest in the felony, and in such case the writ is a Non omittas propter aliquam libertatem: but otherwise it is for debt, or trespasse, the Sheriff or any other cannot break the house to take him. And yet it is to be understood, that if one be indicted of felony, the Sheriff may by processe thereupon after denyall made, &c. breake the house for his apprehension, or upon Hue and cry of one that is slain or wounded, so as he is in danger of death, or robbed, the Kings Officer that pursueth may (if denyall be made) breake a house to apprehend the delinquent: but for Justices of Peace to make warrants upon surmises, for breaking the houses of any subjects to search for felons, or stoln goods, is against Magna Carta, Nec super eum ibimus, nec super eum mittemus, nisi per legale judicium Parium suorum, vel per legem Terræ: and against the * statute of 42 E. 3. cap. 3. &c. And we hold the resolution of the Court, viz. of Brudnell, Pollard, Broke, and Fitzherbert in 14 H. 8. to be law, that a Justice of Peace could not make a warrant to take a man for felony, unlesse he be indicted thereof, and that must be done in open Sessions of the Peace. For the Justice himselfe cannot arrest one for felony, unlesse he himselfe suspect him, (as any other may) and by the same reason he cannot make a warrant to another. And all this appeareth in that book, and is agreeable with our former books in 42 Ass. p. 5 & 12. & 24 E. 3. tit. com. Br. 3. and with reason, for this warrant to take a Felon should be in nature of a Capias for felony, which cannot be granted before indictment, nor after indictment, but in open Court. And this is the reason wherefore Justices of Peace before indictment could not have let any charged with felony or suspition to bail, or mainprise, because Justices of Peace are Judges of Record, and ought to proceed upon Record, and not upon surmises. Sed distinguenda sunt tempora, & concordabis leges: For since the statutes of 1 & 2 Ph. & Mar. cap. 13. and 2 & 3 Ph. & Mar. cap. 10. (the words whereof be, That the said Justices, or one of them being of the Quorum, when any such prisoner is brought before them for any manslaughter, or felony, shall take examination, &c.) if any person be charged with any manner of felony, and information be given to a Justice of Peace of the felony or suspition of felony, and feareth that the Kings peace may be broken in apprehending of him, the said Justice may make a warrant to the Constable of the town to see the Kings peace kept in the apprehending and bringing of the party charged with or suspected of the felony before him, and the party that giveth the information of his knowledge or suspition to be present and arrest the delinquent; and in this manner it is implied and intended by the said statutes for the prisoner to be brought before them: and this (as we take it) agreeth with the common use and observance ever since those statutes. And this agreeth also with the said book in 14 H. 8. that a Justice of Peace may make his warrant for the salvation of the peace, meaning to affirm the party that knoweth or hath suspition of the felony. But in this case neither the Constable, nor any other can break open any house for the apprehension of the party suspected or charged with the felony, for it is in law the arrest of the party that hath the [a] knowledge or suspition, who cannot break open

13 E. 4. 5. 20 E. 4. 6. b. He may enter into the house the door being open. See lib. 5. f. 91, 92. Semains case.

7 E. 3. 16. 29 E. 3. 9. 2 E. 4. 8. 9 E. 4. 26.

Mag. Car. c. 29.

* Read the stat.

14 H. 8. fo. 16 2.

Vid. 1 R. 3. ca. 3. 3 H. 7. cap. 3. 1 & 2 Ph. & Mar. ca. 13. & 2 & 3 Ph. & Mar. &c.

[a] 2 H. 7. 3 & 15.

4 H. 7. 2, 3. 5 H. 7. 4. 10 H. 7. 17. 20 H. 7. 12. 7 E. 4. 20. 8 E. 4. 3. b. 10 E. 4. 17. 9 E. 4. 26. 11 E. 4. 4. 13 E. 4. 9. 7 H. 4. 35. 17 E. 4. 5. 27 H. 8. 23. 2. Dier 7 Eliz. 236. b.

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any house: but if the * door of the house be open, he may enter into the same, and arrest the party. Thus much upon reading of some that have written of the Office of Justices of Peace, we have thought good to adde. For though commonly the Houses or Cottages of poore and base people be by such Warrants searched, &c. yet if it be lawfull, the houses of any subject, be he never so great, may be searched, &c. by such Warrant upon bare surmises.

* 20 E.4. fo.6. 17 E.4.5.2. Lam. fo. 188, 189.

¶ * *Baile and Mainprise.* See the second part of the Institutes. W.1. ca.15. fol.472, &c. Glanv. li.14. ca.1. W.1. cap.15. 27 E.1. stat. de finibus cap.3.

* Concerning bailement and mainprise, and what offenders were baileable by the Common law, you may read in the Second part of the Institutes, W. 1. ca. 15. Now something is necessary to be added in respect of some variety of opinions touching the true diversity and signification of Bailment, Mainprise, Fideijuss. Surety, Pledges, Plevin, Plevina, Replevin, Borough, and the like. And first of Baile.

¶ *Of bail and bailment.*

Some derive this word from the French word *Bailler*, id est, Tradere, to deliver, because the prisoner is delivered out of prison; but it cannot so be derived: for the entry is, traditur in or per ballium, and then the sense (or non-sense) should be, he is delivered into delivery. But this word Ballium is truly fetched from the French Nown Bail, that signifieth a Gardian, Keeper, or Gaoler: [a] and herewith agreeth Bracton, who saith, Non erit ulterius per ballium dimittendus. And againe, Per ballium dimittatur usque adventum Justitiariorum, alioquin remaneat in prisona: and in the same page, tradas in ballium 12 probis hominibus. We reade not in Britton of this word Baile, but of some other words hereafter following. Que plevissent corps de home ceux ne sont my proprement pledges mes sont manipernors pur ceo que ilz supposent que ceux plevisable sont livers a eux per baile corps pur corps.

[a] Bracton lib.3. fol.123. And herewith agreeth the Register. fo.133.b. Fleta lib.1.ca.16. Mirror ca.1. §14.

* There bailment is called a living prison.

[b] A man arrested or imprisoned (and bailable) for felony shall be baited before it appeareth whether he be guilty or no. But if a man be convicted by verdict or confession, &c. he is not bailable, because it appeareth that he is guilty. So, if upon examination a man confesseth a felony, if the Spittimus be for felony confessed, he cannot be bailed.

* Cust. de Norm.
[b] 24 E.3.33. 25 E.3.42.b. mainprise 1. 3 E.3.cor.354. 2 Eliz. Dier 179. F.N.B. 246.c.

[c] By Shard there is a diversity between Bail and Mainprise; for the entry of the bail is, that such an one traditur in ballium, in which case they be his [d] Gardians: and if they suffer him to escape, they shall answer for it.

[c] 33 E.3.Mainprise 12.
[d] This agreeth with the former Etymologie.

[e] And where it is said there, Et per quosdam ilz serra pende, it was spoken but in * terrorem, and thereupon a Quere is made of it. And that it was no felony in ancient time, hear what the Mirror saith. It is abusion to thinke that such pain should be awarded to the Bail, as to the Principals which made default, where they were but amerciable in that case.

[e] 38 E.3.ib.13.ac' 4 H.6. 8. 22 H.6.59. 32 H.6.fo.4.ac' 39 H.6.27. 21 H.7.33. * Vid.infra. †

[f] And where any man is delivered in ballium, he may safely be kept by his Bail for their indempnity, because the Court of Justice doth deliver him unto them to be safely kept.

[f] 36 E.3.ubi sup. Br.Mainprise 89.

The manner of the severall entries of the bail is worthy of observation, because it is only attained unto by observation of presidents, and the course of Courts.

And first in case of bailment for felony by the Common law, those that do baile him are severally bound to the King by Recognisance in a certain summe, that the prisoners shall appear at a certain day, &c. Et ultra quilibet eorum corpus pro corpore, &c.

21 H.7.20.b. per Fineux. F.N.B.251.d.

The bail of a felon before two Justices of the Peace, whereof one to be of the Quorum by the statutes of 1 & 2 Ph. & Mar. & 2 & 3 Ph. & M. is for the felon in double, and for each of the bail in single. As for example: If the felon be 40 li. the bail is 20 li. a piece. And herein to observe in effect three things. 1. Ad comparendum at the next Gaol-delivery. 2. Ad standum recto de felonia predicta. 3. Ad respondendum dicto Domino Regi, &c. See the Second part of the Institutes, the Statute of Marlebridge, cap. 27. if the party bailed Propter privilegium Clericale respondere noluerit, non amercientur illi quibus traditus in ballium. There must be also a Liberate in that case to the Gaoler, if the felon be formerly committed to prison, to deliver him out of prison.

See Lamb. fo. 352, 353. F.N.B.251.f.

Nota, amercientur, * Vid.supra. †

Before

Before the ſaid ſtatutes of 3 E. 1. cap. 15. 27 E. 1. cap. 3. and 1 & 2 Ph. & M. cap. 13. If any perſon had been let to bail that was not bailable: by law this amounteth to a negligent eſcape, and ſhall be puniſhed as a negligent eſcape of a felon ſhall be, that is, to be fined at 5 li. But by the ſtatute of 1 & 2 Ph. & Mar. the Juſtices of Gaole-delivery ſhall in that caſe ſet what fine upon the Juſtices of Peace, &c. they ſhall think fit. Upon a Capias, and a Cepi corpus returned, the entry is traditur in ballium 8 die Maii Anno 16 Regis H. 8. *Io. Long*, &c. uſq; diem Mercurii prox' futur', & ſic de die in diem, & termino in terminum, quouſq; placitum prædictum terminetur, *viz.* quilibet eorum corpus pro corpore.

25 E.3.39. 3 E.3. tit. cor. 40 Aſſ.42. 3 E.1.cap.15. 27 E.1. ſtat. de finibus, cap.3.

If A be in cuſtodia Mareſchal' in the Kings Bench, & a Bill of debt be brought againſt him; and the defendant finde B for his bail, B entereth a Recognizance to the plaintife with this condition precedent, Quod ſi contigerit præd' defendentem debit' & damna illa præfato querenti minime ſolvere, aut ſe priſonæ Mareſchalli ea occaſione non reddere, that then he would ſatisfie the ſame.

Hil. 18 H.8. Bendl. This bail is determined by the judgement, if the principall be then there.

Nota, In theſe perſonall actions the baile is only bound, & their Recognizance is generall, and of no certain ſumme, as it is in caſe of felony: and againſt him that is by baile in the Kings Bench, any ſtranger in the ſame Term may ſue him by Bill in any perſonall action; otherwiſe it is if he were by Mainprize de die in diem. But if A be outlawed in any perſonall action, and taken by force of a Capias Utlegatum, and plead any plea triable by the Country in avoidance of the Outlawry, as that he was commorant in another County, &c. In this caſe A ſhall be bailed, and the entry is, Super hoc, T B. & B T. manuceperunt præfat. A. habendum corpus ejus hic, &c. & ſic de die in diem in quemlibet diem placiti, quouſque placitum prædictũ terminetur, & judicium inde redditum fuerit, *viz.* quilibet eorum corpus pro corpore: Et prædictus A aſſumpſit pro ſeipſo eſſendi tunc hic ad quemlibet diem placiti prædicti ſub pœna 40 li. &c. ſi contingat ipſum A ad aliquem diem, &c. defaltam facere, aut ſectam ſuam in hac parte non proſequi. Note, whereſoever the principall is bound, it is in a certain ſumme.

21 H.7.40.b. 9 E.4. 2.a. See before cap. of the Kings Bench. Here the Bail are bound in no ſum but *corpus pro corpore*, the principall in a certain ſum.

And where ſome do hold, that in all caſes when any ſtatute enacteth that the body of the Delinquent ſhall be committed to priſon at the will of the King, he cannot be let to Mainprize before the Kings will be known; The Rule is good if it be rightly underſtood; for he cannot in that caſe by force of any ſuch ſtatute be impriſoned, before he be indicted, convicted, and judgement given, and then he cannot be bailed or letten to mainprize, becauſe his offence appeareth, as hath been ſaid.

Stanf. pl.cor. 77.b.

And the caſe there cited in 24 E. 3. upon the ſtatute of 2 E. 3. cap. 3. for going armed in Weſtm. Hall, &c. the Booke ſaith, That Thomas Figgot Chivaler fuit arraine per Shard, &c. which proveth that he was indicted, arraigned, and legally proceeded with, neither was his armour forfeited before conviction. And note, that the ſaid Act in that caſe giveth the forfeiture of his armour, and impriſonment: and therefore in that caſe he ſhall not be fined: but Sir Thomas Figgot might have been bailed before conviction.

24 E.3.33. Sir Tho. Figgots caſe.

¶ *Of mainprize.*

In the next place we are to ſpeake of Mainprize, Manucaptio, which deriveth it ſelfe, and ſignifieth a taking into the hand.

Every baile is mainprize, (for thoſe that are bail take the perſon bailed into their hands and cuſtody) but every mainprize is not a bail, becauſe no man is bailed but he that is arreſted, or in priſon: for he that is not in cuſtody or priſon cannot be delivered out, as before it appeareth. But a man may be mainperned which never was in priſon, and therefore mainprize is more large then bail. As in an Appeal of felony, the defendant wage battell &c. and a day appointed, &c. the plaintife ſhall finde mainprize, &c. to appear, &c. And yet he never was in priſon or under cuſtody. And * ſometime theſe mainpernors are called pledges. Alſo if A be in execution for debt, &c. at the ſuit of T, and ſueth a Scire fac' upon a releaſe or the like, the Entry is, Et ſuper hoc prædictus A. dimittitur per manucapt' E D. E F. qui eum manuceperunt, ad habendum corpus ejus hic ad præfatum terminum, & ſic de die in diem, &c. quouſque inde judicium redditum fuerit. Et ſi pro prædict. T. tranſierit, exequatur, *viz.* quilibet ſub pœna 40 li. quas quilibet

17 E.1.fo.2. 17 Aſſ.p.1. 5 E.3. 21. 32 E.3. Mainprize. 23. *9 H.4.3.1 H.6.6. 30 E.3.20. 26 E.3.12. 11 H.4.43. 12 R.2.conuſance 37. 8 H.6.30.

quilibet recognovit, &c. ad opus ipsius T. levari, &c. si contigerit ipsum A. ad aliquem diem placiti defaltam facere, seu idem placitum cum effectu minime prosequi, vel se ab executione judicii, si pro præd. T. reddatur versus ipsum A. faciend. retrahere, &c. And this is properly in the Entry said, by mainprise, and no baile, because it is for the plaintise in the Scire fac' who was in execution. Now for as much as every bail is a mainprise (as hath been said) baile is oftentimes tearmed in our Books by the name of mainprise as before it hath partly appeared, and as it appeareth in the * Writ De Manucaptione. 38 E. 3. fo. 14. 11 H. 6. 31. 50 E. 3. 11. 1 H. 7. 1. And in divers Acts of Parliament, Acton Burnell 11 E. 1. 4 E. 3. cap. 2. 23 H. 6. cap. 10. 1 & 2 Ph. & Mar. cap. 13.

Lastly, [a] there is a manifest diversity between De die in diem, and a bail: for he that is by mainprise De die in diem no Bill can be maintainable against him: otherwise it is against him that is by bail per cursum curiæ.

Plegii and Plegiatio are derived of the French word Plegie, which signifieth one that undertaketh for another, a surety, fideijussor. Now as every bail is a mainprise, so every bail and mainprise is ex vi termini plegiatio: which see in Glanvile for the Act of suretiship. But in legall understanding it is taken, first for the pledges which the demandant or plaintise finde in such writs as begin Si A (*i.* querens) fecerit te securum de clamore suo prosequendo, &c. And these are called plegii de prosequendo, and the reason of these were, for the answering of the King of the Amerciament if the demandant or plaintise were barred or nonsuit, &c. so cautious were the founders of our law, that the King should ever be answered of such duties as belonged to him: but the Writ of the [b] King, Queen, or of an Infant, shall not comprehend that Clause, si fecerit te securũ, &c. because they shall not in those cases be amerced. But it is observable, that the tenant or defendant shall finde no pledges: and yet if judgement be given against him he shal be amerced, &c. for * melior est conditio possidentis & rei, quam actoris.

[c] Pledges may be found in the Chancery, or may be entred at any time hanging Writ or Bill by the discretion of the Justices, upon gaging deliverance by the avowant he shall finde pledges de liberatione illa faciendа.

[d] There be also plegii de retorno habendo by the statute of W. 2. Of Pledges come Plevin, Replevin, Replegiari, &c. See the statute of Marlebridge. ca. 27. that traditus in ballium, replegiatus, & per plegios is all one and synonyma.

[e] When the defendant commeth in by Cap. or Exigent, he shall not finde pledges but mainprise.

[f] He that sueth by Bill shall find pledges De prosequendo in fine billæ, which have been controverted in books.

We have hitherto spoken of pledges in a judiciall course. [g] There be also voluntary pledges, as you may read in Fleta. lib. 2. cap. 5. 32 E. 3. monstrans des faitz. 179. 42 E. 3. 11. 44 E. 3. 21. 48 E. 3. 20. 22 Eliz. Dier 270. F.N.B. 137. c.

Surety comprehendeth all the former. And note, there is a surety by the Common law, and surety by statute. By the Common law, [h] as in a Writ De securitate invenienda ne exeat regnum, &c. There is surety of the peace, and surety of the good behaviour de bono gestu. The surety of the peace cannot be broken without some act, as an Affray, or Battery, or the like. But the surety De bono gestu consisteth chiefly, that a man demean himselfe well in his port and [k] compasse, doing nothing that may be cause of the breach of the peace, or of putting of the people in fear or trouble; and that it doth not consist in observation of things that concern not the peace, as in not well doing his art or occupation. Thus far is the authority of the Booke in 2 H. 7. by the resolution of all the Justices assembled for that purpose. But in mine opinion, the Reporter male se gessit in the last words of the case.

[l] At a generall Sessions holden at Bridgewater in the County of Somerset, Anno 28 Eliz. one William King with sureties was bound by recognisance to appear at the next generall Sessions of the Peace in the same County. Et quod interim se bene gereret erga dictam Dominam Reginam, & cunctum populum suum. And after at the next Sessions, William King appeared and was indicted for slanderous

* Register. F.N.B. 249. 250. Bract. lib. 3. 154. * 33 E. 3. mainprise 12. 36 E. 3. ib. 13. 1 R. 2. tit. bill 9. 9 E. 4. 12. 7 H. 8. 4. 31 H. 6. 10. 32 H. 6. 4. 3 H. 6. 37. 21 H. 7. 33. a. Vid. 4 H. 6. 8. per Cokaine.

¶ *Of Pledges.* Glanvil li. 10. c. 5. Stat. de effic. cor. 4 E. 1. Plegii de prosequendo.

[b] F.N.B. 31. f. & 195. h. 17 E. 3. 75 b. Lib. 8. 6. & lib. 5. 49. a. Bract. li. 4. f. 254. a.

* Regula.

[c] Regist. 288. F.N.B. 19. 18 E. 4. 9.

[d] Vid. 2 H. 6. f. 15. 2 part of the Inst. W. 2. cap. 2.

[e] 31 E. 3. mainprise 21. 42 E. 3. 7. acc.

[f] 12 El. Dier 288. 20 E. 3. pledges 11. 9 E. 4. 27. 2 H. 4. 17. 18 E. 4. 9. 2 H. 7. 1. 17.

[g] See Mag. Cart. cap. 8. 2 part of the Institutes.

¶ *Surety, Securitas.*

[h] Regist. F.N.B. 85. See the third part of the Instit. cap. Fugitives

[i] 2 H. 7. fo. 2. 13 H. 7. fo. 10. b.

[k] 13 H. 7. fo. 10. b. 1 H. 7. 8. per Fineux & Trem. These words are well explained.

[l] Hil. 30 Eliz. coram Rege infra.

[l] Hil. 30 Eliz. coram Rege.

slanderous words spoken since his binding, *viz.* for saying at one time to Edw. Kyrton Esq; Thou art a Pelter, thou art a liar, and hast told my Lord lies, and I will make thee a poor . And he was further indicted, that since the said Recognisance, Clausum cujusdam Johannis Wich, vi & armis fregit & intravit & averia & catalla ipsius Johannis in clausu prædicto de pascent' illicite vexavit & chasiavit. And afterwards at another time he said to the said Kyrton, Thou art a drunken Knave: which indictment was removed into the Kings Bench. And hereupon two questions were debated divers times both at the Barre and the Bench. First, admitting that all that is contained in the Indictment be true, whether any therein was in judgement of law a breach of the said Recognisance. The second, for how much the said indictment was good in law. As to the first, it was resolved, that neither any of the words, nor the trespasse, were any breach of the good behaviour, for that none of them did tend immediatly to the breach of the peace, for though the said words (especially thou art a lyar, &c. thou art a drunken Knave) are motives and mediate provocations for breach of the peace, yet tend they not immediately to the breach of the peace; as if William King had challenged Kyrton, or sent him a Challenge to fight with him, or had threatned Kyrton to beat or wound him or the like: these tend immediately to the breach of the peace, & therefore are breaches of the Recognisance of the good behaviour. And this diversity was justly collected upon the coherence & contert of the statute of 34 E. 3. whereby Justices of Peace are assigned for keeping of the Peace, & to restrain the Offenders, Riotors, & all other Barattors, and to chastise them according to their trespasse & offence; and to enquire of Pillors and Robbers, in the parts beyond the seas, and be now come again, & go wandering & will not labour, &c. (And thus much for punishment of offences against the peace after they be done: now followeth an expresse authority given to the Justices, for prevention of such offences before they be done.) *viz.* * And to take of all them that be not of good fame, (that is, that be defamed and justly suspected that they intend to break the peace,) where they shall be found sufficient surety and mainprise of their good behaviour towards the King and his people (which must concerne the Kings peace, as is also provided by the word subsequent) to the intent that the people be not by such Riotors troubled or indamaged, nor the peace blemished, nor Merchants nor other passing by the Highwayes, disturbed, nor put in the perill that may happen of such offenders. For the trespasse, &c. Although every wrongfull trespasse is quare vi & armis & contra pacem, yet these force and arms, or contra pacem implyed in law are not taken to be such as shall make a breach of the good behaviour; because they are trespasse upon the land or touching goods or chattels, and not the person of a man.

34 E. 3. cap. 2.

* This was the first statute that gave this expresse authority to Justices of peace,

As to the second point it was holden, that the Indictment concerning the words was void and coram non judice, and good only for the trespasse, quare clausum, &c. But if there be any just cause of breach, he ought to have a Scire fac' upon the Recognisance.

21 E. 4. 10.

In an Account, if a Capias ad computand' be awarded against the defendant, and thereupon he is outlawed, and rendreth himselfe to the prison of the Fleet, and Auditors be assigned to him, before whom they be at issue, and the Auditors bring the Record into the Common Pleas, and the defendant found surety in 200 li. to appeare in proper person every day pendente placito; and if the issue passe against him, that he rendreth himselfe to prison.

21 H. 6. 26.

[a] 45 E. 3. Surety 24.

[a] A fine sur conusance de droit was levied to an Infant, and because the Infant ought to pay the fine to the King, he found securitatem de fine solvendo.

Register 291. b. Nota. F. N. B. 79. g.

There is also a Writ De securitate pacis, & de bene gerendo.

2 H. 7. 14. &c.

[b] In homine replegiando the defendant avow for that the plaintife is his villain regardant. The plaintife said that he is free, and thereupon they were at issue; the plaintife prayed that he might gage deliverance. And it was awarded that he should have deliverance of his goods, and finde no surety that the avowant should have the goods againe if it were found for him. But note when the avowant be at issue upon the villenage, [c] then the plaintif shall find surety to sue cum effectu.

36 H. 6. 23. 3 H. 4. 9. [b] 6 E. 4. 8. 12 E. 4. 4. a. 5 H. 7. 3. a. 13 H. 7. 17. a. [c] 3 H. 7. 3.

See F. N. B. 151. g

Surety; By ſtatutes: See the ſtatute of W. 1. cap. 20, De malefactoribus in Parcis in the Second part of the Inſtitutes in the expoſition of the ſame; the ſtatute of Gloc. cap. 4. and W. 2. cap. 21. for finding of ſurety in a Ceſſavit. See alſo the Second part of the Inſtitutes in the expoſition thereof.

The ſtatute of W. 2. c. 4: Et ſtatut. de defenſione Juris, An. 20 E. 1. of finding of ſurety by tenant by Reſceipt. See the Second part of the Inſtitutes the expoſition of the ſame. And many other whereof we need not to make mention; only this is obſervable, that when any ſtatute doth require pledges or ſurety to be found, they ought to be ſufficient, for inſufficient pledges are no pledges in judgement of law; and ſurety cannot be ex vi termini unleſſe it be ſufficient.

W. 2. ca. 29. Mag. Cart. cap. 26. * Reg. 133. 134. 28 E. 3. ca. 9. S anf. Pl. Cor. 77. g. See Hil. 32 E. 1. Coram rege Rot. 71. & 79. Regiſt. 268. b. F. N. B. 250. a. Bract. li. 3. f. 154. 28 E. 3. cap. 9.

It appeareth by W. 2. cap. 29. that the * Writ De odio & atia concerning the bailment of priſoners is grounded upon Magna Carta. And it is holden by ſome, that Writ is not now in uſe, but is taken away by the ſtatute of 28 E. 3. But this Writ is revived again by the ſtatute of 42 E. 3. cap. 1. whereby it is enacted that if any ſtatute be made againſt Magna Carta, or Carta de Foreſta, it is enacted to be void. See more of this matter in the Second part of the Inſtitutes, Mag. Cart. cap. 26. which were unneceſſary here to be rehearſed. This Writ, De odio & atia is omitted by Fitzh. in his N. B. Concerning the Writ De manucaptione, one kind thereof directed to the Sherif is a writ grounded upon, and rehearſing the ſtatute of W. 1. cap. 15. and how that before him by a certain inquiſition of office A B ſtandeth indicted de quodam latrocinio cujuſdam equi, &c. Now in as much, as by the ſtatute of 28 E. 3. he cannot take ſuch inquiſitions by force of any writ or Commiſſion, therefore that writ De manucaptione ceaſeth. But the writ of manucaptione may be directed to other Juſtices, as to the Juſtices of the Foreſt, Juſtices of Peace and to other: for the ſtatute of 28 E. 3. extends only to Sheriffs, and to Sheriffs only upon taking of inquiſitions. But a writ of manucaptione may in other caſes be directed to the Sherif. Vide the ſtatute of 4 E. 3. cap. 2. for the Court of the Marſhalſea, F. N. B. 25. I.

Regiſt. 80. a. Regiſt. 133. b. F. N. B. 250. k. l. & 251. a. b. c.

Regiſt. 79. F. N. B. 250. d. f. i. See Bract. li. 3. 121. 154. Fleta li. 2. ca. 2.

For the writ of homine replegiand', ſee the Regiſter fo. 133. F. N. B. 66 E. Hil. 43 E. 3. Coram rege Rot. 110. Suſſex. Mich. 5 H. 4. Rot. 26. Devon' per breve Regis in duobus Com' William Scuttes caſe. 11 H. 4. 15. F. N. B. 68. c. Cap. in Withernam.

Bract. li. 3. fo. 145. Britton fo. 49. Fleta li. 1. ca. 40. Mirror ca. 2. §. 11. *Le appeal de imprisonment.*

So odious was unjuſt impriſonment, or unjuſt detayning of any Freeman in priſon, as in ancient time there lay a writ De pace & impriſonamento, &c. ubi liber homo, &c. uno modo propter injuſtam captionem, & alio modo propter injuſtam detentionem, &c. And there you may read the forme of the writ of Appeal, De pace & impriſonamento, which we have the rather remembred, that it may be obſerved what ſeverall remedies the law hath allowed for the relief and eaſe of the poor priſoner. But the readieſt way of all is by Habeas Corpus in the Term time, or in the Vacation out of the Chancery, as you may read at large in the Second part of the Inſtitutes, Mag. Carta cap. 29. and ſtatut. de Gloc. c. 9. and the Expoſition upon the ſame.

34 H. 8. c. p. 14. This is expounded to be *reddendo ſingula ſingulis reſpective.* Vide 8 E. 4. 18.

[a] Vid. Dier 8 El. 253, 254. upon another branch of this Act.

[b] 14 H. 7. 20. *per Keble Br.* Judg. 8. to be underſtood of the Kings Bench.

14 H. 7. 15. b. *Per Mordaunt.*

The Clerk of the Crown, Clerk of the Peace, and Clerks of Aſſiſe ſhall certifie briefly a tranſcript of ſuch Attainder, Outlawry or conviction as is had for any kind of felony before Juſtices of Oier & Terminer, Juſtices of Gaol-delivery, and Juſtices of Peace before the King in his Bench, there to be & remain of Record, &c. [a] See the ſtatute, a very neceſſary law for the plea of auterfoitz attaint or convict for ouſting of Clergy, &c. and for eſcheats and forfeitures to the King.

[b] For the better underſtanding of this Act of Parliament, it is to be underſtood, that ſuch Attainders of Outlawry and convictions of felony before any of the Juſtices named in this Act, as are certified, or delivered into the Kings Bench, are under the cuſtody of the Clerk of the Crown of that Court, and for that cauſe he is named in this Act.

See the ſtatute of 9 E. 3. cap. 5. by which it is ordained and eſtabliſhed, that Juſtices of Aſſiſe, Gaol-delivery, and of Oier and Terminer, ſhall ſend all their records and proceſſes determined, and put in execution to the Exchequer at Mich. every year once to be delivered there, and the Treaſurer and Chamberlains, &c.

ſhall

shall keep them in the treasury as the manner is, so that the Justices always doe first take out the estreats of the said records and processes against them to send to the Exchequer, as they were wont before.

By the statute of 11 H. 4. ca. 3. Justices assigned (id est, Justices of Assise) shall cause to be delivered into the Kings treasury all the records of Assises, Nordancestor, and of certifications before them determined every second year. 11 H. 4 ca. 3. 13 H. 4. error 91.

All indictments and Presentments in the Sheriffs Turn, or law days shall be delivered to the Justices of Peace of the same County, at their next Sessions of peace to award processe, &c. 3 E. 4. cap 3. Vid. 4. E. 4. f. 31. 8 E. 4 fo. 5.

After the murder or manslaughter found before the Coroners that they deliver their inquisitions afore the Justices of the nert Gaol-delivery. 2 H. 7 ca 1. Lib. Intr. Fol. 43

If any person be murdred in the day, and the murderer escape untaken, the Township shall be amerced, and the Coroner hath power to enquire thereof upon view of the body, and the Justices of Peace have power to inquire of such escapes, and to certifie afore the King in his Bench. 3 H. 7. ca. 1.

And (that we may say somewhat of every thing) Forasmuch as the charge to be given at the Sessions of the peace consisteth on two parts, Laws Ecclesiasticall for the peace of the Church, and laws Civill or Temporall for the peace of the Land, it shall be very fit to lay, as a foundation of the charge, that excellent law established by Authority of Parliament, which we have translated into Latin. Imprimis Rex vult, & præcipit quod Pax Sacrosanctæ Ecclesiæ, & terræ solide custodiatur & conservetur in omnibus, quodque Justitia singulis, tam pauperibus, quam divitibus administretur, nulla habita personarum ratione. W. 1. An 3. E. 1. cap. 1. Pax { Ecclesiæ. Terræ. Justitia pacis mater & nutrix.

First of all, the King willeth and commandeth that the peace of holy Church and of the Land be well kept and maintained in all points, and that common right (i. Justice) be done to all, as well poor as rich, without respect of persons.

Hereupon the charge to consist upon two parts. 1. Of laws Ecclesiasticall, and 2. Of laws Civill or Temporall, with an exhortation to doe justice.

Or an other Axiome or Principle of the law may be the foundation of the charge. Imprimis interest reipublicæ, ut pax in regno conservetur, & quæcunque paci adversentur provide declinentur. 1 Mar. cap. 12. 3 & 4 E. 6. ca. 5. Though the Body of these Acts be repealed, yet the *Axiome* rehearsed in the Preamble shall continue for ever.

It is most necessary in a Commonwealth to provide, that tranquillity and peace be continued in the Realm, and that all things being contrary thereunto may by foresight be eschewed.

* Or that of 32 H. 8. There is nothing within this Realm that conserveth the subjects in more quietnesse, rest, peace, and good concord, then the due administration of his laws. * 32 H. 8. cap. 9.

Or the like, see the Third part of the Institutes, in Epilogo.

CAP. XXXII.

A Court of Inquiry of the defaults of the Iuſtices of Peace, Juſtices of Aſſiſe, Sherifs, and Under-ſherifs, touching the execution of the ſtatute of 13 H.4. Cap.7. Concerning Riots, Aſſemblies, and Routs.

2 H.5.cap.8. See 19 H.7.c.13.

THis Court is raiſed by the ſtatute of 2 H. 5. and is a Court only of Inquiry, and to certifie the inqueſts incontinent into the Chancery, as by the ſaid ſtatute more at large appeareth.

CAP. XXXIII.

Juſtices in Eire.

See the 2. part of the Inſt. W. 1. cap. 27. Bracton lib. 3. fo. 116. Britton fo. 1. 2 E. 3. fo. 27. Kelw. fo. 143.

THey were originally inſtituted for the good rule of the ſubjects, and for the eaſe of the Countries, and that ſuch as had Franchiſes might claime them.

They were called Juſticiarii in Itinere, or Itinerantes, in reſpect of other Juſtices that were reſidentes. In the black book in the Exchequer, cap. 8. they are called Juſticiarii deambulantes, & perluſtrantes. See Vet. Mag. Cart. 2 part. fo. 72. Artic' & ſacramenta in Itinere.

Their Authority was by the Kings writ in nature of a Commiſſion, they had jurisdiction of all Pleas of the Crown, and of all actions reall, perſonall, and mixt: they road from ſeven years to ſeven years (but now by the ſtatute of 27 H. 8. ca. 24. all Juſtices in Eire muſt be by Letters Patents under the Great Seal) In what County ſoever they came, all other Courts during the Eire ceaſed, and all thoſe pleas in that County, or riſing there before any other, the Juſtices in Eire might proceed upon as the others might have done. For example: A writ was directed to the Juſtices of the Common Pleas to adjorn, and ſend all the pleas of that County which were in the Court of Common Pleas before the Juſtices in Eire to be determined before them, &c. And if judgment had been within that County, the Juſtices in Eire might award execution without a Scire fac'. See the First part of the Inſtitutes, Sect. 514. and read the ancient books and other Authorities there quoted for their antiquity and juriſdiction, and the cauſes wherefore they vaniſhed away. But the other Juſtices of Eire, viz. of the Forreſt, continue to this day according to their originall inſtitution. See the Chapter of the Court of the Forreſt. See alſo the Second part of the Inſtitutes, Marlbridge 24, 25. 27. W. 1. cap. 18. & W. 2. cap. 10. and the Expoſition of every of them.

Regiſt. F. N. B. 243. k. 14 H.7.29. 15 H.7.5.

What Franchiſes and liberties ought to be claimed before Juſtices in Eire, ſee lib. 9 fol. 24. the caſe of the Abbot of Strata Marcella.

The ſtile of their Court was, Placita de Juratis & Aſſiſis & Coron. de Itinere Johannis de Vallibus & ſociorum Juſtic' Itiner' apud Ockham in com' Rutland in craſtino Epiphaniæ Domini, Anno regni regis Edw. 14.

These Juſtices in Eire did hold their Courts, as hath been ſaid, from ſeven years

years to ſeven years, and firſt they began with Pleas of the Crowne, for ſaith Bracton, Imprimis incipere debent de Placitis Coronæ, in quibus terminantur actiones criminales tam majores quam minores. **And one could not be indicted for any thing, concerning the Pleas of the Crown, done before the laſt** Eire: **for ſo it appeareth by** Bracton, Non erit quærendum de Placitis illis Coronæ quæ emerſerunt ante aliud iter Juſticiariorum, & quæ coram eis propoſita non fuerunt. **And by** Fleta, Ex capitulis de veteribus Placitis Coronæ alias preſentatis & nondum terminatis, ſolet exceptio quibuſdam indictatis oriri, quod de novo indictamento de fact' ante ultimum iter impoſito non tenetur reſpondere; & ſi non ſit allocabilis, ſequitur quod Juratores hundredi puniendi ſunt de concelamento, vel de perjurio convincendi.

Bract. lib. 3. fo. 115. b. 116. b. Fleta li. 2. cap. 29. *verſ. finem.*

Vide poſtea Ca. 60. of Pipowders.

And it were to be wiſhed that in criminall cauſes at the Kings ſuit, there were a limitation of time, ſpecially in caſes concerning the life of man. The Common law in appeals at the ſuit of the party hath in thoſe caſes limited a time, viz. **that they muſt be brought within the year and the day after the offence committed: and the reaſon thereof was, that the cauſe might be tryed, whileſt it was freſh in memory, and that ſuch as could teſtifie were living.**

Vid. Hil. 15 E. 1. in Banco Rot. 56. **they could adjorn into another County.**

The Juſtices in Eire **might inquire of the deeds of Juſtices of** Gaol-delivery. Bracton **ſaith,** Et ſi poſt inter vallum accuſare velit, non erit de jure audiendus, niſi docere poteſt ſe fuiſſe juſtis rationibus impeditum. **And** Bracton **alſo ſaith, that after the charge given the Juſtices in** Eire, debent transferre ſe in locum ſecretum, & convocatis ad ſe quatuor, vel ſex, vel pluribus de majoribus de com' qui dicuntur * Buſones com' ad quorum nutum dependent vota aliorum qualiter à dño rege & conſilio ſuo ſit proviſum, quod omnes tam milites quam alii qui ſunt [a] 15 annorum & amplius jurare debent, &c.

Rot. Par. 10 E. 1. Rot. 6.

* *Buſones ſive Burſones*, of the French word *Bourſon*: for as it is in the proverb, He that beareth the purſe ruleth the roaſt, which agreeth with Bractons deſcription here, *Ad quorum nutum dependent vota aliorum.* So vulgarly called, which alſo Bracton inſinuateth, when he ſaith, *Qui dicuntur buſones.* [a] It is miſprinted, and ſhould be 12 *annorum.* 2 for 5. See the 2. part of the Inſt. Mag. Car. ca. 7. & 35.

So great was the authority of Juſtices in Eire, **that if they came into the County where the Juſtices of the Court of Common Pleas ſat, the juriſdiction of that Court during the** Eire **ceaſed, but they yeelded to the Kings Bench.**

Br. Jurisd. 116. 27 aſſ. 1. F. N. B. Fleta li. 1. ca. 10. §. *Ex capitulis verſ. finem.*

See Cap. Itineris, Vet. Mag. Cart. part. 1. fo. 150, 151, &c.

See Hovenden, Anno Dñi. 1176. Vid. Hil. 13 R. 2. pl. 2. **Of proceedings before them.**

Rex Juſticiariis ſuis prox' Itinerantibus, in com. N. Salutem. Quia per * *commune concilium regni noſtri Angliæ proviſum eſt, quod quilibet liber homo libere poſsit facere Attornatum ad libertates ſuas vendicandas, exigendas, proſequendas, & defendendas; Vobis mandamus, quod Attornat' quem* A *per Literas ſuas Patentes ſuo loco attornare voluerit, ad libertates ſuas vendicandas, exigendas, proſequendas, & defendendas coram vobis in Itinere veſtro in com' prædicto, loco ipſius* A *ſine difficultate ad hoc recipiatis, &c.*

Regiſt. 19. b. * *Viz.* W. 2. c. 10. Nota the Regiſter is a good expoſition of this ſtatute. See the 2. part of the Inſt. W. 2. cap. 10.

See alſo another writ in the Regiſter, Ubi ſupra, De clamore admittend' in Itinere, &c.

CAP.

CAP. XXXIV.

The Court of Juſtices of Trailbaſton.

THeſe Juſtices ſate by force of the Kings Commiſſion of Oier and Terminer grounded, as ſome hold, upon an Ordinance made by King E. 1. and the Lords at a Parliament holden in Anno 33 E. 1. for the haſty proceeding. And therefore they were called Juſtices of Trailbaſton, becauſe they proceeded as ſpeedily as one might draw, or trail a ſtaffe, they ſay upon the ſaid Ordinance in the ſame year, viz. 33 E. 1. a Commiſſion of Oier and Terminer Vocat' Trailebaſton ſecundum ordinationem inde fact' in Parliamento de Anno 33 E. 1. By this it appeareth, as ſome have conceived, that this Commiſſion was builded upon an Ordinance in Parliament, and not upon an Act of Parliament.

33 E. 1. in Dorſ. Par. parte 1.

Others ſay that this Commiſſion was grounded upon an Act of Parliament in Anno 33 E. 1. intituled Statutum quod vocatur Ragman de Juſticiariis aſſignatis. See the ſtatute, and that the Ordinance mentioned in the Commiſſion of 33 E. 1. is the ſtatute Ragman, ſtatutes being often called by the name of Ordinances, for every ſtatute is an Ordinance, ſed non è converſo.

Ver. Mag. Cart. 2 part. fo. 28.

But let us now conſider what light our books have given us, the ſtatute being ſomewhat obſcure and dark.

In Trin. 2 E. 3. we read this caſe. William de B. ſued a writ of Error returnable in the Kings Bench upon a judgement given in a plea of land at the ſuit of John Hodey, which was pleaded by bill before Juſtices of Trailbaſton, where becauſe the Juſtices of Trailbaſton did ſend only the record of the plea, they were commanded to ſend the tranſcript of their Commiſſion, and the bill alſo with the pannell, the which they did, and again the record alſo. In which caſe you may obſerve theſe Five Concluſions. First, it was aſſigned for error, that John Hodey made his plaint of certain land againſt William de B. being preſent in Court before the Juſtices of Trailbaſton, and he was put to anſwer without making of proceſſe againſt him, and therefore they erred in receiving the plea without proceſſe, &c. ſed non allocatur. Secondly, for the Juſtices of Trailbaſton be in their caſe as Juſtices in Eire; and in Eire when the party puts in his bill againſt another which is preſent in Court, the Juſtices in Eire ought to receive it. Thirdly, another error was aſſigned, that it appeared by the record, that preſently the Juſtices of Trailbaſton tooke an inqueſt de circumſtantibus, which came not in by proceſſe to give their verdict, and alſo it appeared by the record, that the Twelve gave their verdict, ſuper ſacramentum ſuum, without ſaying de conſenſu partium; ſed non allocatur. For in Trailbaſton and in Eire certaine men are made to come by whom thoſe Juſtices doe inquire ex officio, that is, without proceſſe whereunto the parties which have pleaded to iſſue agree to be tried by them, the Court erreth not if they take an Enqueſt of them, and it is not found of record, that William de B. did diſſent: and as to the other point, the Court ſhall intend an aſſent where there appeareth no diſſent. Fourthly, the errors aſſigned being no errors, the Court did ſearch for errors, and to affirm the judgement or to reverſe it. And the Court did find in the firſt record which was ſent, that William de B. dicit quod in nullo eſt inde culpabilis, & de hoc ponit ſe ſuper patriam, where John de Hodey which was Plaintif did not joyn with him, & prædictus querens ſimiliter

2 E. 3. fo. 27.

similiter, which joyning was in the second record certified; but for that, that record came in without warrant, and the first record certified is the record in law, thereupon the former judgement was reversed. Fifthly, that no error was assigned, that the Justices of Trailebaston had no lawfull jurisdiction, but a Writ of Error brought upon their Judgement, whereby, and by all the content of this case their jurisdiction was affirmed, the Judges of the Kings Bench having, as is aforesaid, a Transcript of their Commission. Also they had jurisdiction in case of indictment of death, and so allowed, but Appeals of felony were excepted in the said Statute. 1 E. 3. 28.

Vide Dorf. Pat. Anno 14 E. 3. part 3. m. 8. & 2. A Commission of Trailbaston was granted to Robert Parning Treasurer and others in London, Middlesex and Surrey, and like Commissions were granted in other Counties. 14 E. 3.

A Petition was exhibited by the Commons in full Parliament, who prayed that no manner of Eire or Trailbaston might be holden during the warres, or 20 years, &c. but it was not granted. Rot. Parl. 1 R. 2. 101.

But Præcipitatio est Noverca Justitiæ: and both in respect of the precipitation and of some reference to the next Parliament by the Statute of Ragman, this Commission wholly long since vanished, and is left out of the Register as not to be put in execution. But the Commission of Oier and Terminer there remaineth as necessary and usefull for the punishment of horrible and enormious offences. See before the Chapter of Oier and Terminer.

CAP.

CAP. XXXV.

The Court of VVards and Liveries raiſed by Authority of Parliament.

The ſtatute of 32 H.8. cap.46. ¶ *The Court of the Kings Wards.*

FIrſt, the King our ſaid Soveraigne Lord by authority aforeſaid, Ordaineth, maketh, eſtabliſheth, and erecteth a certaine Court commonly to be called for ever *The Court of the Kings Wards:* which Court by authority aforeſaid continually and for ever ſhall be a Court of Record, and ſhall have one Seale to be graven and made after ſuch form, faſhion, and manner, as ſhall be appointed by the Kings Highneſſe, and ſhall remaine and be ordered, as hereafter ſhall be declared.

A Court of Record.

By the ſtatute of 33 H. 8. cap.22. the office of the Liveries is annexed to the Court of Wards. So as now it is in the Court of Wards and Liveries.

See the firſt part of the Inſtitutes. Sect.441.

Alſo be it enacted by authority aforeſaid, that all Wards which the Kings Highneſſe now is, or hereafter ſhall be intituled to have, with their Manors, Lands, Tenements, Rents, Remainders, Reverſions, Services, and all other Hereditaments whatſoever they be, as well in poſſeſſion as reverſion, and all Revenues, Iſſues, and Profits of the ſame, and every part thereof, for the time the ſame ſhall be, or ought to be in the Kings poſſeſſion, ſhall be in the order, ſurvey, and governance of the ſaid Court, and the Miniſters of the ſame, in manner and forme, as by this Act is declared and limited.

All Wards. Manors, Lands, &c.

In the order, ſurvey, &c.

Alſo that the ſaid Maſter of the Wards for the time being ſhall have full power and authority to award under the Seale to be appointed to the ſaid Court in the Kings name ſuch Proces and Precepts with reaſonable pains to be therein limited, as be now commonly uſed in the Kings Court of the Duchy Chamber of Lancaſter being at Weſtm. againſt every perſon or perſons whatſoever they be, for and concerning the intereſt, right and title of the Kings Majeſty, his Heirs and Succeſſors, of, in or for any Wards, Lands, Tenements, Rents, Account, Receit, Services, or other cauſe in any wiſe touching or concerning any thing appointed by the order of the ſaid Court, or any part thereof, for and on the behalfe of our ſaid Soveraigne Lord the King, or to or for any debt, riſing and growing by occaſion of the ſame.

Proces.

Duchy Chamber.

In any wiſe touching or concerning, &c.

Debt.

Alſo be it enacted by the authority aforeſaid, that the ſaid Attorney, Receiver Generall, and Auditors ſhall diligently from time to time attend upon the ſaid Maiſter in the ſaid Court for the hearing and ordering of matters and cauſes in the ſame Court for the time of four Terms in the year uſually kept for the law at Weſtm. and procure with all diligence, that all rents, ferms, profits, caſualties, improvements, and other emoluments of the Wards marriages, Ideots, and all Manors, Lands, Tenements, and Hereditaments being in the ſurvey and governance of the ſaid Court, ſhall be truly and juſtly paid, and anſwered to the ſaid Receiver Generall of the ſaid Court to the uſe of the Kings Highneſſe without concealing any part thereof. And ſhall alſo cauſe and procure Proceſſe to be made againſt ſuch as ſhall be indebted

Attend.

By the ſaid Act of 33 H.8. the Surveyour is added, and to take place before the Attorney.

Indebted.

to

to the Kings Highneſſe and their ſureties of and for any part thereof, from time to time, as the time and caſe ſhall require without any delay.

Alſo be it enacted by the authority aforeſaid, that all manner of Proces that ſhall be made out of the Kings Exchequer to or againſt any perſon or perſons for any Ferme, Rents, Iſſues or profits concerning the premiſes or any part thereof, or any other thing limited in this Act to be in the ſurvey, order, and governance of the ſaid Court, and the miniſters thereof, ſhall be clearly void and of none effect to all intents and purpoſes. No Proces out of the Exchequer for or concerning any Ward, &c.

Alſo be it enacted by the authority aforeſaid, that the ſaid Maſter by the advice of the ſaid Attorny, Receiver Generall, and Auditors, or three of them, whereof the ſaid Maſter to be one of them, ſhall have authority by this Act to ſurvey all the Kings Widows, and to treat, commune, and conclude as well with all and every of the Kings Widows that now be, or hereafter ſhall be and that have married themſelves without the Kings licenſe, or that hereafter ſhall happen to marry themſelves without the Kings licenſe, for their reaſonable fines to be made to the Kings uſe; and to tax and aſſeſſe the ſame by their diſcretion according to the ſtatute of *Prærogativa Regis*: the ſame fines to be paid to the Receiver Generall of the Wards Lands, as the ſame may appear yearly in his account. Widowes.

Alſo be it enacted by the authority aforeſaid, that the ſaid Maſter by the advice of the ſaid Attorny, Receiver Generall and Auditors, or three of them, ſhall have authority by this Act to ſurvey, govern and order all and ſingular Ideots and naturall Fools now being in the Kings hands, or that hereafter ſhall come and be in the Kings hands. And alſo to ſurvey and order all the Manors, Lands, Tenements, and other Hereditaments whatſoever, now being in the Kings hands, or in the hands of any other perſon or perſons to their uſes, or to the uſe of any of them, that hereafter ſhall come and be in the Kings hands, his Heirs and Succeſſors in the right of any of them by reaſon of his Graces prerogative Royall: And alſo by the advice of the ſaid Attorny, Receiver Generall, and Auditors, or three or two of them, to let and ſet, the Manors, Lands, and Tenements to the Kings uſe for the time of the Kings intereſt for ſuch rent and fine, as by their diſcretion ſhall be thought convenient; the finding and keeping of the ſaid perſons their Wives and Children, and the reparations of their houſes and lands alwayes to be conſidered in the doing thereof; the ſame rents and fines reſerved to the Kings Grace to be paid alwayes to the hands of the Receiver Generall of the Wards lands for the time being, as the ſame may appear in his account, and be recorded in the Court of Wards. Ideots. Naturall Fools. To let and ſet.

And alſo be it enacted by the authority aforeſaid, that the ſaid Maſter for the time being ſhall have power and authority to take Recogniſances of all and every perſon and perſons that ſhall be called into the Court of Wards and Liveries to anſwer to any matter alledged againſt them in the ſaid Court, to make their daily appearance in the ſaid Court, to anſwer to ſuch matters as to them then and there from time to time ſhall be alledged. And that all ſuch Recogniſances of what ſumme ſoever they be, ſhall be as good and effectuall in the law to all intents and purpoſes, as Recogniſances taken in the Kings High Court Called by Proces.

of Chancery, or elſewhere before any Judge of Record within this Realm. And that the ſaid Maſter for the time being with the advice of the Court, or of ſuch member of the ſame as then ſhall be preſent, ſo that they be two beſide the ſaid Maſter, ſhall have full power and authority to moderate ſuch Recogniſances as be or ſhall be there forfeited, and to ſet fines for the ſame to the Kings uſe under the ſummes contained in the ſaid Recogniſances; the ſaid fines to be levied by like Proces of *Scire facias*, as by the ſtatute made in the 27 yeare of our Soveraigne Lord the Kings reigne is given to the Chancelour of the Court of Augmentations of the Revenues of his Graces Crown. And that the ſaid Maſter for the time being with the advice aforeſaid ſhall have power and authority to commit to ward any perſon or perſons for his or their diſobedience, contempt, or other offence made, or to be made triable within the Kings Court of the Wards and Liveries, and upon the ſaid matters ordered or decreed there, to deliver them from priſon, and to cancell and make void all Recogniſances and Obligations taken or hereafter to be taken in the ſame Court to the Kings uſe when and as often as the ſaid Maſter, with the advice of the ſaid Court or three of them, ſhall ſee and perceive the matters and cauſes, for the which any ſuch Recogniſances or Obligations hath or hereafter ſhall happen to be taken, to be finiſhed and ended, and the Kings Grace his Heirs and Succeſſors, or the party thereupon ſatisfied, without any other warrant for the ſame.

To moderate Recogniſances.

¶ *The Authority of the Courts of Exchequer, Wards and Duchy.*
A Clauſe of the ſtatute of 33 H. 8. cap. 39.
* Aſſigned.

And alſo ſhall have full power and authority to heare and determine all and all manner of Debts, Detinues, Treſpaſſes, Accounts, Reckonings, Waſts, Deceipts, Negligences, Defaults, Contempts, Complaints, Riots, Quarrels, Suits, Striſes, Controverſies, Forfeitures, Offences, and other things whatſoever they ſhall be, which ſhall hereafter grow, be moved, ſtirred, procured, purſued, or ariſe in, for, or upon any matter, cauſe, or other thing * aſſigned, committed, or appointed to the ſeverall directions, orders, and governances of the ſame Courts, or any of them, or for or upon any manner of thing or things which may or ſhall touch or in any wiſe concerne the ſame, wherein the King ſhall be only party. And alſo all manner of States for tearme of years between party and party concerning the premiſes, and to correct and puniſh by their diſcretions all and every perſon and perſons which before them ſhall be convicted of any of the premiſes according to the nature, quality, or quantity of his or their offence or offences, cauſe or cauſes, matter, or maters (all and all manner of Treaſons, Murders, Felonies, Eſtates, Rights, Titles, and intereſts as well of inheritance as freehold, other then joyntures for tearm of life, only excepted and alwayes forepriſed.)

Before we deſcend to the ſeverall parts and branches of theſe Acts, it ſhall be expedient for advancement of truth to handle and cleare two Queſtions. Firſt, when Wards became due to the Kings of England, by what title, and upon what reaſon. Secondly, who had the charge of the Kings Wards; how they were diſpoſed of, and in what Court this revenue was anſwered before the reign of H. 8.

The

The firſt contains three things, Time, Title, and Cauſe. And in all theſe three Polydor, and ſuch as follow him, do erre: For Polydor ſaith that *Henricus 3. Anno Domini 1219 qui avitum regnum civili bello, ac diſſenſionibus vaſtatum, opibus ſpoliatum, atque prope confectum paulo ante adeptus erat, cum rei domeſticæ inopia preſſus, non poſſet ſine auxilio ſuorum, Aſiaticum bellum juvare, vitamque regiam decenter degere, principes ſoluto prius tributo, pro eo bello gerendo poſtea excogitato novo vectigalis genere, ut regem ſuum ea inopia levarent, [a] ultro conceſſerunt, ut quoties quiſpiam eorum, qui poſſeſſiones haberent [b] quarum Rex eſſet Dominus, ante moreretur quam liberi quos feciſſet hæredes vigeſimum alterum agerent annũ, tum eatenus tam ipſe hæres quam patrimonium in poteſtate atque tutela regis foret, & ille patrimonii hujuſmodi proventus caperet, quoad hæres ad eam ætatem perveniret: quia apud Anglos more majorum perveluſto conſervandarum facultatum cauſa, filius mas natu grandior ſit ſolus hæres, vel filia ſi mares liberi nulli ſint. Egit Rex gratias omnibus generatim pro munere, ac ut ne id humanitatis in oblivionem iret, deinceps iſtiuſmodi nobilium hæredum tutelas ut rem ſibi valde utilem accuratiſsime ſuſcepit. Sed illud beneficium nequaquam ipſi nobilitati peſtremo loco fuit, quando cæteri reges qui ſecuti ſunt, non habita ratione, quod à principibus olim in Henricum duntaxat collocatum fuiſſet, ut qui pauper eſſet decentius perſonam regiam per illud ſuſtineret, ſibi etiam perpetuatum voluerunt. Quid, quod ita res cura omnibus fuit, ut non modo reges, ſed reliqui locorum domini in hæreditates nobilium defunctorum eodem modo invaſerint, id quod etiam nunc fit, & lege certa obſervatur. Vnum iſtud inſtituũ eſt tandẽ aliquando corrigendũ, quippe quod quantũ uni vel alteri commodi, tantũ aliis incommodi affert: ſane ita uſu venit, ut populorũ quibus hæreditates veniunt tutelæ ſæpe à locorũ dominis ad tempus ſicut dictũ eſt, illorũ tutoribus per auctionem vendantur, quo ſic facto lucro, ab ea educandorum puerorum cura vacui ſint, & qui emunt, emunt autem tam nobiles, quã homines novi, ſi modo plus dederint, ea præſertim de cauſa redimant, ut pupillos nobiliũ ſuis liberis matrimonio conjungant. Idq; ſæpiſsime faciunt, antequã illi pubeſcant, quo ſimul vivendo, cum primum per ætatem liceat, urgente voluptatum titillatione invicem commiſceantur, ut ne poſtea, cum adoleverint, jam mutui polluti nuptias repudiare queant, qui ſic ſeſe ab ineunte ætate libidinibus dedecorantes interdum non homines, ſed ob virium infirmitatem plane homunciones gignunt à majoribus degenerantes. Atqui nobilitas cum primis eo damnum facit longe ingentiſsimum quod homines humili loco nati per ejuſmodi connubia ſanguinem cum ea ſocient, contaminentque in dies ſingulos ejus vetuſtum genus, & pupilli ipſi à ſinu matrum per emptionem erepti parum interdum honeſtis in aliena domo inſtituantur. Oritur vel hinc res alia indigna de qua nunc tacere libet, iſtorum enim conjugum gratia admodum modica aliquoties exiſtit cum ante ætatem, & aliquando contra voluntatem nobiles faminæ, virique plebeis copulati perraro inter ſe ament. Prætereo & illud, quantum patrimonia nobilium, cauſa hujuſce tutelæ lacerentur à novis poſſeſſoribus, qui ſuis avare commoditatibus ſervientes pecus omne non modo tondent, ſed deglubunt egregie. Atque hoc eſt principum munus, quod regias opes maxime adauxit.*

Polydor lib. 16. pag. 288.

Excogitato novo vectigalis genere.
[a] Ultro conceſſerunt.
[b] Quarum rex eſſet Dominus.

Herein Polydor hath erred in all three. For firſt, where he affirmeth for the time, that this Novum vectigalis genus was excogitatum, and granted to King Henry the third Anno Domini 1219. which was in the third year of his reigne, Glanvil who wrote in the reign of H. 2. treateth of Wardſhips due to the King and

Lib. 7. cap. 9, 10.

And Ockham who wrote *tempore* H. 2, treateth alſo of Wardſhips & Liveries.

and other Lords: to the King in theſe words. Notandum tamen quod ſi quis in capite tenere debet, tunc ejus cuſtodia ad dominum regem plene pertinet, ſive alios dominos habere debeat ſive non, quia dominus rex nullum poteſt habere parem, multo minus ſeniorem, &c. **And he treateth** ubi ſupra **of Wardſhips then due, (which holdeth law till this day) and ſpeaketh nothing of the beginning of them.**

Matth. Paris, pag. 246.

King John **in the ſeventeenth** year **of his reign made a great Charter, and granted** Concilio Baronum, quòd cuſtos tꝛæ hæredis qui infra ætatem fuer non capiat de terra hæredis niſi rationabiles exitus, & rationabiles conſuetudines, & rationabilia ſervitia, & hæc ſine deſtructione & vaſto hominum vel rerum. Et ſi nos commiſerimus cuſtodiam alicui talis terræ vicicomiti vel alicui alii, qui de exitibus terræ illius nobis debent reſpondere, & ille deſtructionem de cuſtodia fecerit vel vaſtum, nos ab illo capiemus emendam, & terra committatur duobus legalibus & diſcretis hominibus de feudo illo, qui ſimiliter nobis reſpondeant, ſicut prædictum eſt. Cuſtos autem quamdiu cuſtodiam tꝛæ habuerit, ſuſtentet domos, parcos, vivaria, ſtagna, molendina, & cætera ad illam terram pertinentia de exitibus terræ ejuſdem. Et reddat hæredi, cum ad plenam ætatem pervenerit, terram ſuam totam inſtauratam de carucis, & omnibus aliis rebus, ad minus ſecundum quod illa recepit.

1 part of the Inſtitutes, Sect. 103.

2. **Where** Polydor **ſaith,** Ultro conceſſerunt ut quoties, &c. **he affirmeth that it came from the grant of the ſubject to the King. The truth is, that all Tenures by Knights ſervice, which ſince the Conqueſt dꝛaweth ward and martage (foꝛ reliefe was due befoꝛe) were either created and reſerved by the King, oꝛ beforꝛe of** 18 E. 1. Quia emptores terrarum **by the ſubjects of the Realm. If by the King, it is either of the perſon of the King,** ut de corona, **which we call** in Capite, **oꝛ of ſome Honour oꝛ Manoꝛ. If by a ſubject, either of his perſon oꝛ of an Honoꝛ oꝛ Manoꝛ. And all theſe tenures have been created accoꝛding to this rule,** Cujus eſt dare, ejus eſt diſponere. **And all the lands in England oꝛiginally moved from the King, and are holden of him mediately oꝛ immediately.**

Polydor ſaith, that this *Novum vectigalis genus* was granted to the King.

1 part of the Inſt. Sect. 1.

3. **He utterly miſtaketh the end of the creation of theſe tenures by Knights ſervice, which were oꝛiginally created foꝛ the defence of the Realm by his owne ſubjects, which is moꝛe ſafe, then to truſt to foꝛeiners. But hereof you may reade at large in** Littleton Sect. 95, 96. & 103. & Li. Rub. Mavult enim princeps domeſticos, quam ſtipendiarios bellicis apponere caſibus.

Britton fo. 162. b. Lib. Rub.

This Tenure which now is called Eſcuage, **oꝛ** Servicium Scuti, **was of ancient time named** expeditio hominum cum ſcutis, **as you may read in the Charter of King** Kenulphus, **who** Anno domini 821 & regni ſui 25 **granted to the Abbot of Abbandon many Manoꝛs and lands, and reſerved** quòd expeditionem duodecim virorum cum tantis ſcutis exerceant, Antiquos pontes, & arces renovent, &c. **Of all other ſervices and Charges he and his ſucceſſoꝛs were diſcharged.**

The Charter of King *Kenulfus* Anno Dom. 821.

The like Charter of King *Ethelred* to a Knight called *Athelweg*, Anno Dom. 995.

In nomine excelſi Tonantis, cujus nutu & miſeratione à pio patre præditus, rega Ethelred *Rex totius Inſulæ cum conſenſu & licentia Optimatum meorum aliorumque meorum fidelium dabo, & libenti animo concedo Cloſic. quandam ruris particulam, hoc eſt,* 20 *manſos in loco quem ruricolæ vocitant* at yceantun *in hæreditatem perpetuam, & ſemper liber permaneat notis & ignotis magnis & modicis, ad habend' & tradend' qualicunq; voluerit relinquat ab omni tributo & * ſervicio regali, niſi conſtructione pontis, et arcis adificatione, & hoſtium expeditione. Actum eſt autem hoc meæ conceſſionis donum Anno Dominicæ Incarnationis* 1001, *&c.*

The Charter of King *Ethelred.* 1001.

Bracton lib. 2. fo. 36, 37, &c.

1 part of the Inſtitutes Sect. 103 Verb. Chivaler.

Caſtle.

Comming of enemies.

In the Book of Domeſday you ſhall finde it thus recoꝛded. Sudrie.

Ditone. Regiſt. fo. 2. Domeſday tit. Ceſtreſc.

Epiſcopus Baioc'.

Ille qui tenet de Wodardo reddit ei 50 s. & ſervicium unius militis, **and in diꝛers other places. And in Domeſday mention is often made of** Drenches oꝛ Drenges, **which is as much to ſay as** Tenentes per ſervicium militare.

Many

Many others of this kind might be cited to prove that prudent Antiquity ever provided by reservation of tenure (amongst other things) for the defence of the Realm against the Invasion of Enemies.

All our ancient Authors treat hereof. See the First part of the Institutes, Sect. 103. and see the Grand Customer of Normandy, Cap. 33. &c. fo. 49.

Glanv. l. 7. c. 9. 10. *Ockham in diversis locis.* Mirror cap. 165. Bracton lib. 2. fo. 36. a. 85. Britton fo. 162, 28. 95. Fleta l. 1. ca. 8.

You have heard before de regali servicio, before the Conquest, but that regale servicium (which was Knights service) drew unto it relief, but neither wardship of the body or of the land, as hath been said; it is true that the Conquerour in respect of that royall service as a badge of the Conquest took the wardship of the land and the mariage of the heirs within age of such tenants, but this extended not to the tenures of the subjects by Knights service, as it appeareth by Bracton: Dicitur Regale servicium, quia spectat ad dominum regem, & non alium, & secundum quod in Conquestu fuit adinventum; & hujusmodi servicia persolvuntur ratione tenementorum, & non personarum, quia ex tenementis proveniunt, ut si dicatur faciendo inde forinsecum servicium, vel regale servicium, sive servicium domini regis, &c. So as the Conquerour provided for himself, but other Lords at the first by speciall reservation since the Conquest provided upon gift of lands for themselves: Regis ad exemplum totus componitur orbis, wherein that which we had from the Conquerour we freely confesse, and that which the Normans had from us, we have truly related in other places.

Bract. l. 2. fo. 36. Ubi supra. The tenure (as before it appeareth) was not then invented, but the fruits of the tenure of the King, *viz.* Wardship and mariage, which was Bractons meaning.

The good King H. 1. son of the Conquerour finding that the wardship of the body and lands of his Tenants by Knight service erected by his Father was both grievous and unjust, by his great Charter Anno primo regni sui, reciting Quod regnum suum oppressum erat injustis exactionibus, &c. (and particularly tempore patris sui) did grant (amongst other things) Quod si uxor cum liberis remanserit, dotem suam & maritagium habebit dum corpus suum legitime servabit, & eam non dabit nisi secundum velle suum, & terræ & liberorum custos erit sive uxor, sive alius proquinquior, &c. To be short, by that golden Charter, Omnes malas consuetudines, quibus regnum Angliæ injustè opprimebatur, inde abstulit, & lagam regis Edovardi reddidit. These were called King Edwards laws, not that King Edward made them, sed quia ex tribus legibus, sc. Anglorũ, Danorum, & Merciorum unam legem communem edidit. Vide Ranulph' Cestrienſ. Lib. 1. cap. 50.

And where some have objected that wardship is a badge of servitude, for that in the writ of Nativo habendo, one of the Explees (amongst others) is capiendo redemptionem ab eo pro filiis & filiabus maritandis, & aliis Villanis serviciis. That is, taking ransome of him for the mariage of his sons and daughters, and other villain services. To this it is answered, that the King for mariage of his Wards taketh no ransomes, but such moderate sums of money, as in respect of the quality and state of the Ward, he, or she, all circumstances considered, is able to pay, and in regard thereof he hath the protection of the Court of Wards during minority: but if ransomes should be taken, it should not only be against the right institution of Wardships before remembred, but also a badge of servitude: and therefore by the statute of Magna Carta, of H. 3. cap. 4, 5, 6. (seeing the Crown had a long possession of the Wardship of the body and lands of the Kings tenant by Knights service) it was provided, first, that the King or his Grantee or Committee should not take of the lands of the heir * but reasonable issues, reasonable customes and reasonable services, without destruction, &c. (and all unreasonable and excessive things are against the Common law, Excessivum omne in jure reprobatur.) Secondly, shall keep up the houses and other inheritance of the heir, and deliver to the heir, all his lands stored with ploughs and all other things (woods and all) at least as he received them: whereby it appeareth, that the value of the mariage should be so reasonable, as the heir should not at his full age be enforced for payment thereof to sell either lands or goods. Thirdly, that if the heir be maried, that he be advanced thereby, and not disparaged.

* Note, *reasonable* thrice repeated, that it might be observed.

John Earl of Oxford being the Kings Ward maried without the Kings licence;

Rot. Parl. 15 H. 8. nu. 19.

cence, for the which, both for the contempt, and for the duty to the King for so marying, he was fined at Three thousand pounds, which was not the value of his lands by one year: and yet he petitioned in Parliament to be pardoned of part thereof, which was thought reasonable. And certainly the reasonable rating of Wardships of the body and lands is both according to the laws of the Realm, and a mean of increase of the Kings Revenue.

As to the third: there were of ancient and latter times Masters or Keepers of the Kings Wards for the Kings best advantage, and the profits and revenue thereof were answered in the Kings Court of Exchequer: as taking one example or two in stead of many for both the points.

* Rot. finium. 14 H. 3. m. 9. Hereof see Mat. Par. Anno domini 1232. 16 H. 3. Of Hubert de Burgo, & Stephen Segrave. See also Int. Rot. finium, Anno 3 E. 1. m. 4. Rot. Par. 3 E. 1. m. 33. Rot. finium. 13 E. 1. m. 24.

* Rot. Pat. 25 H. 6. parte 2. m. 24.

* Rex commisit Radulpho de Nova villa Episcopo Ciceſtr. & Stephano de Segrave custodiam omnium Escheatorum suorum qui accidunt per totum regnum Angliæ, tam in Wardis, quam in omnibus aliis Eschaetis quæ regi accidere possint, & respondend' inde ad Scaccarium.

[a] See the statute of 51 H. 3. stat. de Scaccario. Sheriffs shall be Keepers of the Kings Wards, and answerable for the issues thereof in the Exchequer.

[b] What care there was of ancient time to preserve the tree of pious, honourable, and profitable tenures of the King, and for profit especially tenures in Capite and by Knights service, and that the King should be truly answered of Wardships, and other fruits and profits due unto him by reason thereof, it notably appeareth by the Articles inquirable by the Justices in Eire, and by our ancient books.

* See the First pt of the Institutes, li. 2. *per totum.*

* Capit. Itineris in Vet. Mag. Car. 157. 158. Bract. l. 3. 116. b. Britton fo. 28. Heta l. 1. ca. 20.

* *De Eschaetoribus & Subeschaetoribus in seisina domini regis facientibus vastum, vel destructionem in parcis, boscis, vivariis, vel Warrennis infra custodias sibi commissas per dominum regem, quantum & de quibus, & a quo tempore. Item de eisdem qui occasione hujusmodi ceperint bona defunctorum, vel hæredum in mann domini regis injuste, donec redimerentur ab eis, & quid, & quantum pro hujusmodi redemptione & quid ad opus suum inde retinuerint, & à quo tempore. Item de eisdem qui minus sufficienter terras alicujus in favorem ejusdem, vel alterius cujuscunque cui custodia terrarum illarum dari, vendi vel concedi debuerit, in deceptionem domini regis, & ubi, & quando, & quid inde ceperint, & à quo tempore. Item de eisdem qui prece, precio, vel auxilio vel favore consenserint, vel consuluerint quod custodiæ domini regis venderentur pro minore precio, quam vendi deberent secundum verum valorem, vel maritagia ad dominum regem spectantia. Et si aliquo modo concelaverint custodias domini regis, vel maritagia hæredum, vel tenentium de rege in capite, vel maritagia dominarum, viduarum maritatarū sine licentia regis, & si quid propter hoc ceperint & quantum, & à quo tempore. Item de hiis qui reservaverint ad opus proprium custodiam, vel maritagium per leve precium, sive per concelamentum factū versus dominum regem, & cujusmodi damnum rex inde habuerit, & à quo tempore. Item cujusmodi seisierint terras, & per quantum tempus eas in manu domini regis tenuerint. Item de terris captis in mann domini regis, quæ capi non deberent, & postea restitutis per præceptum domini regis cum perceptis, utrum percepta restituerint ad mandata domini regis, vel non. Et de omnibus prædictis factis & commissis infra viginti & quinque annos proxime prædictos prædicti Justiciarii se intromittant. Et omnes illi qui sentiunt se super hiis gravatos, & inde conqueri voluerint, audiantur, & fiat eis super hoc justicia, & ipsi Justiciarii pro hiis quæ dominum regem contingunt diligenter inquirant, &c.*

Vet. Mag. Carti 160, 161. Inter Capit. Escaetriæ.

Primo & principaliter inquiratur de feodis militum, & advocationibus Ecclesiarum ad dominum regem pertinentibus, viz. *quot sunt, & quæ sunt tenementa, & quantitas tenuræ, & per quæ servitia.* *Item*

Item ſi feoda illa integra ſint vel demembrata, non habendo reſpectum ad tempus. Item ſi demembrata, per quem, quando, cui, qualiter, quomodo, & quantum valent per annum. Item ſi tradantur alicui ad terminum vitæ, vel annorum ſine licentia regis, tunc cui, quando, qualiter, & quomodo, & quantum valent per annum. Et ſi tenentur per medium, per quem medium.

Item de tenementis quæ tenentur de rege in capite, vel teneri debent, ſi aliquis faciat ſe medium inter dominum regem, & verum tenentem ſuum, tunc quæratur ubi, quando, qualiter, & quomodo, & ad quod damnum regis, vel ſi modo tenuram mutaverint.

Item de aliis qui tenent de corona per magnam Serjantiam, vel parvam, antiquum dominicum domini regis, ſocagium, feodi firmam, vel per aliquod ſervicium, ſi iidem tenentes aliquod alienaverint, vel demembraverint, cui, quando, quantum, qualiter & quomodo, ſive ſint de aliquo honore, ſive de corona, & de valore annuo. Et ſi aliquis, qui de rege tenuerit per antiquum dominicum vel ſocagium, mutaverit tenuram ſuam, & ad damnum regis, cui, ubi, quando, qualiter, & quomodo, & ad quod damnum regis, & quantum hujuſmodi tenementum valet per annum.

Item ſi aliquis concelaverit aliquem redditum, ſive aliquod ſervicium, ſeu aliquas conſuetudines domino regi debitas, tunc quis, quando, qualiter, & quomodo, & quæ ſervicia, & quem redditum, & quas conſuetudines, & quæ tenementa tenent de quibus debentur hujuſmodi ſervicia, & quantum valent per annum, & ad quod damnum regis hujuſmodi concelamenta ſunt.

Item, de hæredibus quorum cuſtodia & maritagium pertinent ad dominum regem, & dominus rex ea habuerit, quando deberet habere. Et ſi aliquis hujuſmodi hæredum ingreſſus fuerit ſine authoritate curiæ, & abſque legitima ætatis ſuæ probatione ſi infra ætatem, & ſi plenæ ætatis, abſque faciendo regi homagium, vel aliud ſervicium quod ei debet. Et tunc quis ſit ille hæres, quo tempore intravit, & poſt mortem cujus & per quod ſervicium illa hæreditas teneatur, & quantum valet per annum.

Item de viduis ſimiliter quarum maritagium pertinet ad regem, ſi ſe maritaverint ſine licentia regis, cui, quando, cujus conſenſu, & ad quod damnum regis, & quantum tenementa valent quæ tenent in dotem de primo marito ſuo.

Item de hæredibus qui deberent eſſe in cuſtodia regis, & quis cuſtodiam uſurpaverit ſuper regem, & à quo tempore, & quantum tenementa quæ tenent valent per annum.

Item ſi aliquis hujuſmodi hæredum cujus anteceſſor de rege tenuit in capite, ſive de aliquo hærede in cuſtodia regis exiſtente, maritatus fuerit ſine licentia regis, tunc cui, quando, & per cujus conſenſum, & quantum terræ illæ valent per annum, & quantum cepit pro maritagio.

Item ſi dominicæ terræ domini regis in iſto Wapentagio ſunt in tali ſtatu ſicut eſſe deberent, vel ſi trahuntur ad firmam, ſi dimittantur ſecundum valorem annuum earundem, & ſi cuſtodes vel firmarii vaſtum vel deſtructionem, venditionem ſeu exilium fecerint in eiſdem, vel in terris exiſtentibus in manu domini regis per cuſtodiam, vel alio modo, quis, ubi, quando, &c.

Mea ſo præcions was immediate tenures of the King, as you read in the Parliament Roll in 18 E. 1. in theſe words.

Gilbertus

Rot. Par. 18 E. 1. fo. 4. nu. 52. Note the form of this tenure.

Gilbertus de Vmphrevill petit licentiam quod poſsit feoffare Gilbertum filium ſuum primogenitum, & Margar. uxorem ejus de manerio ſuo de Overton, Tenend' de ipſo Gilberto patre durante tota vita ipſius patris, & poſt ejus deceſſum de capitalibus dominis feodi. Reſpons. Rex non vult aliquem medium. *Ideo non conceſsit.*

14 E. 3. ca. 13. Rat. 1.

By the ſtatute of 14 E. 3. if the heir of the Kings tenant in Chief, &c. be found within age, and the next friends of the heir, to whom the inheritance cannot deſcend, ſhall come and offer them to take the ſaid lands, yeelding the value to the King till the age of the heir, as far forth as other will yeeld without fraud; by accord between the Chancelor and the Treaſurer, they ſhall have Commiſſion to keep the ſaid lands by good and ſufficient ſurety till the age of the ſaid heir, and to anſwer the King the value. In this Act this Treaſurer is intended of the Treaſurer of the Exchequer. See before in the Chapter of the Court of Exchequer.

Rot. Par. 1 R. 2. nu. 79. Rot. Par. 10 E. 3. nu. 118. * Ro. Par. 22 E. 4. nu. 16. not in print.

Amongſt the petitions of the Commons, they pray that the ſaid ſtatute of 14 E. 3. may be obſerved, which the King granted.

It is provided by Act of Parliament in Anno 22 E. 4. that where ſundry of the Kings tenants holding of him immediately, as of his Duchy of Lanc', by ſundry recoveries, fines and feoffments in uſe, defeated the King of Wardſhips of body and lands: It is enacted, that the King and his heirs ſhall have the Wardſhip and cuſtody of the body and lands of every ſuch perſon being within age, to whoſe uſe the fee ſimple or fee taile of any hereditaments ſo holden ſhall grow as heire by the death of any of his Auncеſtors, and if they be of full age to have relief notwithſtanding any ſuch conveyance.

Ibidem nu. 17.

An exact proviſion is made for writs to be granted out of the Chancery for the embeſilling of any ſuch heir upon ſuch purſuit of the Atturny of the Duchy.

4 H. 7. ca. 17. A generall law. Note the ſeverall pennings of theſe two ſeverall Acts.

By the ſtatute of 4 H. 7. it is provided that the Lord of Ceſti que uſe, no will being declared, &c. ſhall have a Writ of right of ward for the body and land, and the heir of Ceſti que uſe being of full age at the death of his Auncеſtor ſhall pay relief. And the heir of Ceſti que uſe ſhal have like action of waſt, as if the Auncеſtor had died ſeiſed, &c.

Dier 1 & 2 El. fo. 174. b.

Upon this ſtatute, a caſe that had in Mich. 1. & 2 Eliz. depended undiſcuſſed thirty years as the Lord Dier reports, but not in the Court of Wards, (for that Court had not then had ſo long continuance) but in the Chancery and the Court of Wards it had ſo long continued, though in 7 H. 8. it had been reſolved by all the Judges in the Exchequer Chamber, that Ceſti que uſe of lands in fee by Knights ſervice in Capite, and of lands holden of another Lord in ſocage dying ſeiſed of the uſe of both, his heir within age, and no will by him declared, that the prerogative ſhall hold place: which reſolution if it had been publiſhed in print, the tedious and chargeable ſuit had not ſo long continued.

Kylway 7 H. 8. 176. between Conisby and Throckmorton for the heir of Ruſſell.

Lib. 4. fo. 55. &c. Vid. 2 E. 6. cap. 8. Li. 7. fo. 45. Li. 8. 168, 69. See the 2. part of the Inſt. Cap. the ſtatute of 2 E. 6. cap. 8. See 50 E. 3. nu. 184. See hereafter 1 H. 8. cap. 12. This Proclamation we have.

Now for Traverſes, Monſtrans de droit, &c. to be relieved againſt offices found for the King, you may read at large in our books, and eſpecially in the Sadlers caſe in the Fourth book of our Reports, which being the birthright of the ſubject for his relief againſt a falſe office found, cannot be denyed upon juſt cauſe ſhewed, but not to be uſed for delay. This was the offence of Sir Richard Empſon and Edmund Dudley Privy Counſellors to King H. 7. and ſetters of his forfeitures (a new and unaccuſtomed office) who cauſing ſecret and falſe offices (as ſhall appear hereafter) to be found, the parties grieved were denyed to have their traverſe, Monſtrans de droit, &c. which King H. 7. a little before his death being far gone into a conſumption, with great remorſe of conſcience amongſt other things repented, and by Proclamation under the Great Seal in print (amongſt other things) publiſhed in theſe words.

See the ſtatute of 1 H. 8. ca. 12. in ratifying hereof.

And that none of his ſubjects ne make no doubt nor difficulty in all cauſes leefull to make traverſes, for his Highneſſe will expreſſly, and ſtraightly chargeth and commandeth his Chancelour and Treaſurer that they not only admit ſuch traverſes, but alſo grant the ſerms, where the caſe ſhall require, according to the true courſe of his laws.

Here

Hereupon many men were admitted to their traverſes, and many on the other ſide were without remedy; for by the practice of Empſon and Dudley, many were not onely denyed to traverſe, but inforced upon ſuch falſe Offices to ſue out their generall Liveries, whereby they were concluded, and could not by Law be admitted to their traverſe.

King H.8. in the firſt yeare of his reign intending to give remedy againſt ſecret Offices, doth by Act of Parliament provide, * That every Eſcheator and Commiſſioner ſhall ſit in convenient and open places, according to the Statute heretofore made: and that the ſaid Eſcheators and Commiſſioners ſhall ſuffer every perſon to give evidence openly in their preſence, to ſuch Inqueſts as ſhall be taken before any of them, upon paine of xl. li.

1 H.8.cap.8. 3 H.8.cap.2. 34 E.3.cap.13. 36 E.3.cap.13. 23 H.6.17.

* By the procurement of Empſon and Dudley offices were found in ſecret places, and men were denied to give in evidence for proof of their rights and tenures.

And by the Preamble and other parts of this Act of 1. H.8. the ſinifter and unjuſt dealing of the ſaid Empſon and Dudley concerning the finding of Offices, are pourtraped out, whereby the Kings Subjects then of late had been ſore hurt, troubled, [a] and wronged, and ſome diſherited by Nine other wayes. 1 In cauſing untrue Offices to be found. 2 In returning of Offices that never were found. 3 In changing of the Offices that were truly found. 4 That Eſcheators and Commiſſioners were men of no livelihood, but indigent and unworthy perſons, ready to ſerve turnes, and having nothing to loſe, or to make ſatisfaction to the party grieved. 5 That Jurors were returned for the finding of Offices of no hability, or behaviour. 6 That the Eſcheator or Commiſſioner, when the Jury were agreed of their verdict, would not receive the ſame, but therein uſe delayes. 7 That the Clerk of the Petit Bag, &c. would refuſe to receive, and file ſuch inquiſitions as were found and offered to them. 8 The like of the Officer in the Exchequer, of Offices returnable into the Exchequer. 9 The Clerke of the Petit Bag would refuſe to tranſcribe the Offices, &c. into the Exchequer. For all which, and the other two before named, remedy is provided by this Act, as by the ſame appeareth. At the ſame Parliament for the redreſſe of parties grieved for ſuing out of Liveries, another Act is made, entituled, An act concerning untrue inquiſitions procured be *Empſon* and *Dudley*, in theſe words.

[a] See before cap. Of the high Court of Parliament.

1 H.8.cap.12.

Shewen to your diſcreet wiſdomes, that where divers and many untrue Inquiſitions by the procurement of *Richard Empſon* Knight, and *Edmund Dudley*, have been had and taken within this Realme, as well before Commiſſioners aſſigned by Letters Patents of the late king, King *H.*7. as before his Eſcheators, as well by vertue of Writs of the ſaid late King, as by vertue of their office, by the which Inquiſitions, ſometime parcell of the ſaid Lands contained in the ſaid Inquiſitions, and ſometime the whole Lands there founden holden of the ſaid late King in Capite, where in troth the ſaid Lands contained in the ſaid Inquiſitions, nor no parcell of them was holden of the ſaid late King in Capite, ne of any his Progenitors: To the which Inquiſitions the parties then grieved by the ſame, could not, nor might not take their traverſe to the ſame according to the Law of the Land, but were inforced and conſtrained to ſue their * Livery of the ſame out of the hands of the ſaid late King, whereby they were, and be [a] concluded to ſay, that the ſaid Lands be holden of the King in Chiefe, to their great loſſe and hindrance, where in truth they were not holden of the ſaid late King, ne of any his Progenitors. Wherefore be it enacted, ordained and eſta-

* This is intended of a generall Livery. Generall Livery concludeth.

[a] Mich.7.Jacobi reſolved by the two Chiefe Juſtices and the Chief Baron, and the Court of Wards, in *Holmes* Caſe. 1 That the ſuing of a generall Livery concludeth the heire, as here it appeareth by this Act of Parliament, but otherwiſe it is of a ſpeciall Livery, for that, as to the tenure, is but, *ut dicitur*. 2. That this concluſion or Eſtoppel continueth but during the life of the heire that ſueth the Generall Livery; for Jurors are ſworne *ad veritatem dicend'*, and are not bound by Eſtopels. 3. That by ſuing of Livery, and the death of the heire, the office is executed, and hath taken his full effect, and therefore the Eſtoppel expireth therewith, and after the office cannot be traverſed. Vide 46 E. 3. fo. 12. 44 Aſſ. p. 35. *Nota dictum Mowbray ibidem, Si un tient de Roy, &c.* 1 H. 4. 6. 33 H.6.fol. 7.per Laiton. Obſerve well the remedies provided by this particular Act, &c. whereby the Common Law is affirmed.

bliſhed by the King our Soveraigne Lord, the Lords ſpirituall and temporall, and by the Commons in this preſent Parliament aſſembled, and by the authority of the ſame, that every perſon and perſons having poſſeſſion of the ſaid Lands contained in the ſame Inquiſitions, or any part thereof, may be admitted to have their traverſe to the ſaid untrue Inquiſitions, notwithſtanding any Livery ſued in the time of the ſaid late King, King *H.*7. And that it be further enacted by the ſame Authority, that any Livery ſued of the ſame in the time of the ſaid late King, ne any thing contained in the ſame Livery, be any concluſion after the courſe of the Common Law, or in any wiſe hurtfull or prejudiciall to any perſon or perſons, that ſhall happen to tend their traverſe to the ſaid Office, but that they and every of them ſhall be admitted to their traverſe to the ſaid Inquiſitions, and to have like advantage in the Law, as though no livery had been ſued of the ſame in the time of the ſaid late King, and this at the reverence of God, and in the way of charity, &c. Provided alway, that they, or any of them which ſhall tend their traverſe to any of the ſaid Inquiſitions in any manner and forme as is aforeſaid, ſhall not be reſtored to any mean iſſues or profits of Lands and Tenements compriſed in the ſaid Inquiſitions.

See the firſt part of the Inſtitutes Sect. 441. See before Cap. of the High Court of Parliament.

Now touching Liveries which in thoſe dayes were generall, what a world of troubles the ſubjects ſuffered for miſſing of Livery in reſpect of pretended omiſſions, and the like, what charging the Subjects with values not found by any Office, nor appearing by any Melius inquirendum with mean rates where none were, or for longer time, then they were due, and the like, and theſe not recovered by courſe of Law, but ſending for the parties by Purſevants, and by their awfull countenance mixt with menaces and threats, drew them to compoſitions: Which, and other like oppreſſions and injuſtice, filled King H.7. Coffers; for by the Cloſe Roll in Anno 3 H 8. it appeareth, that the King left in his Coffers Fifty and three hundred thouſand pounds, moſt part in forreine Coine, which in thoſe dayes was not of leaſt value. Notwithſtanding King H. 8. at his Parliament holden in Anno 5. of his reigne, Cap. 7. moved for a Subſidie, and was denied it; whereupon an Act was made for taking out of generall Pardons, as a meane to bring money to the King. But I perſwade my ſelfe the Reader will inquire what became of theſe two wicked men, Empſon and Dudley. The anſwer is, that firſt they were ſeverally indicted as followeth,

5 H.8.cap.7.

*Iuratores præſentant quod Richardus Empſon nuper de London Miles, nuper Conſiliarius excellentiſſimi Principis Henrici nuper Regis Angliæ Septimi, 10. die Maii, anno regni dicti nuper Regis viceſimo, ac diverſis vicibus antea & poſtea apud London, &c. Deum præ oculis non habens, ſed ut filius diabolicus imaginans honorem, dignitatem, & proſperitatem dicti nuper Regis, & proſperitatem regni ſui Angliæ minime valere, ſed ut ipſe magis ſingulares favores dicti nuper Regis adhibere * unde magnatem fieri potuiſſet, & totum regnum Angliæ ſecundum ejus voluntatem gubernare, falſo, deceptivè, & proditoriè legem Angliæ ſubvertens, (inter alia) idem Richardus dictis die & anno apud London in Parochia & Ward' præd' &c. diverſas falſas Inquiſitiones, & Officia de intruſionibus & alienationibus, de maneriis, terris, & tenementis, diverſis ligeis ipſius nuper Regis inveniri procuravit & excitavit, quod ipſi maneria, terras & tenementa in Inquiſitionibus illis ſpecificat' de domino Rege in Capite vel aliter tenerent, cum ita non fuit, ac poſtea cum dicti ligei dicti nuper Regis ad Inquiſitiones illas ſic fact' traverſias in Curia ipſius nuper Regis ſecundum legem Angliæ tendere & allegare voluiſſent, iidem ligei ad traverſias illas admitti non potuiſſent, ſed ſe debitis & legitimis*

* Ambitio.

Proditorie legem Angliæ ſubvertens.

Falſas Inquiſitiones & Officia, &c.

Ad traverſias admitti non potuiſſent.

legitimis traverſiis ad officia prædict' faciend' cuſtodivit & retardavit, quouſque ipſi cum dicto Ricardo diverſas & magnas et importabiles fines & redemptiones, tam pro commodo ipſius nuper Regis, quàm pro ſingulari commodo ipſius Ricardi fecer', in magnam depauperationē eorundum ligeorū. Et quod prædictus Ricardus dict' die & anno in Parochia & Warda prædict', ac diverſis vicibus antea & poſtea, diverſos ligeos dict' nuper Regis de dicto domino Rege diverſa maneria, terras, & tenementa per ſervic' Milit' tenent', & mort' anteceſſor' ſuis ipſis infra ætatem exiſtent', & in cuſtodia dict' nuper Regis ratione tenuræ ſuæ, cum ad ætates legitimas pervenerunt, & debitam liberationem maneriorum, terrarum, & tenementorum ſuorum ſecundum formam & legem Angliæ, ac ſecundum curſum Cancellariæ ipſius nuper Regis proſequi voluiſſent, ad hoc recipi non potuiſſent, ſed ad hoc faciend' totaliter negat' et exclus' fuerunt, quouſque ipſi cum prædict' Richardo diverſas magnas & importabiles fines et redemptiones, tam pro commodo ipſius Regis, quam pro commodo ipſius Ricardi fecer', in magnam depauperationem eorundem ligeorū ejuſdē nuper Regis. (And the concluſion of the Indictment is,) *Per quod plures & diverſi populi dicti nuper Regis hiis gravaminibus & injuſtis extortionibus multipliciter torquebantur, in tantum quod populi dicti nuper Regis verſus ipſum Regem multipliciter murmurabant, et malignabant in magnum periculum ipſius nuper Regis regni ſui Angliæ, ac ſubverſionem legum & conſuetudinum ejuſdem regni.*

Pro ſingulari commodo ipſius Ricardi.

Ad debitam liberationem admitti non potuiſſent.

The reſidue of the Indictment concerning other exorbitant oppreſſions and grievances, are worthy to be read, but concerne not the matter in hand.

True it is, that in this Indictment [proditorie] was uſed but for aggravation, and as a preparative to greater offences, for in the ſame yeare they were both indicted of high Treaſon both by the Common Law, and Act of Parliament, and in the 2 yeare of H.8. they loſt both their heads. And albeit in ſome reſpects the ſpeciall Livery is for the benefit of the heire, yet the fees and charges are ſo great and the Bonds and Covenants, &c. ſo many, ſo intricate, and dangerous, as it were worthy to be redreſſed, for the eaſe and quiet of the fatherleſſe, and widow, (being no benefit to the King, but to fill the purſes of Clerkes and Officers) by authority of Parliament; and the rather, for that ſpeciall Liveries were of ancient time, as short as the charges thereof; whereof you may read a notable preſident, when Wardſhips and Liveries were in their Cradles, which followeth in theſe words.

Quorum veſtigiis qui inſiſtunt, eorum exitum perhorreſcant.

Richardus Dei gratia Rex Angliæ, Dux Normanniæ, Aquitaniæ, Comes Andegaviæ, Archiepiſcopis, Epiſcopis, Abbatibus, Comitibus, Baronibus, Juſticiariis, Vicecomitibus, & omnibus Ballivis, & fidelibus ſuis, ad quos præſens Charta pervenerit, Salutem. Sciatis nos [a] conceſſiſſe, & præſenti Charta noſtra confirmaſſe dilecto & fideli noſtro [b] Galfrido filio Petri, & Beatriciæ de Sayeo uxori ejus, tanquam juſto & propinquiori hæredi, totam terram Comitis [c] Willielmi de Mandevile, quæ ei jure hæreditario pertinebat, cum omnibus pertinentiis, & libertatibus, & liberis conſuetudinibus ſuis. Quare volumus, & firmiter præcipimus quod prædicti Galfridus & Beatrix uxor ſua, & hæredes eorum habeant & teneant de nobis & hæredibus noſtris totam prædictam terram cum pertinentiis ſuis, ſicut prædictus Comes Willielmus de Mandevile eam melius, & liberius, & honorificentius, & integrius, & quietius habuit unquam & poſſedit, in boſco, & plano, viis, ſemitis, pratis, paſcuis, paſturis, aquis, vivariis, ſtagnis, piſcariis, molendinis, turbariis, in advocationibus Eccleſiarum, in cuſtodiis valectorum, & donationibus puellarum, & in omnibus aliis locis & aliis rebus. Hiis teſtibus Waltero Rothomagenſi Archiepiſcopo, Johanne Eboracenſi Epiſcopo, Rogero de Pratellis Dapifero

Vide in the hiſtory of Hovenden, pag. 446. 2 R. 1.

[a] Nota, *conceſſiſſe* is a ſure word in omnem eventum, and will anſwer to a Livery.

[b] This Geffery Fitzpeter was after Chiefe Iuſtice of England.

[c] This William de Mandevile was Earle of Eſſex.

fero noſtro, Richardo de Kanvile, Bertrano de Verduno, Radulpho filio Godefredi Camerario noſtro. Datum per manum Magiſtri R: mali catuli Clerici noſtri, Anno regni noſtri ſecundo, xxiij. die Januarii apud Meſſanam.

Now are we arrived at the ſaid Act of Parliament in Anno 32 H.8. wherein, and in the Statute of 33 H. 8. beſides the expoſition of the ſeverall Texts, we will obſerve what alterations theſe two Acts have made.

¶ Ordaineth, maketh, eſtabliſheth, and erecteth a Court, &c.] Herein three things are to be obſerved. 1 That this new Court could not be erected without an Act of Parliament. 2 That when a new Court is erected, it is neceſſary that the jurisdiction and authority of the Court be certainly ſet downe. 3 That the Court can have no other jurisdiction, then is expreſſed in the erection, for this new Court cannot preſcribe.

Paſch.6.Ja.the Biſhop of Saliſburies caſe.

Paſch 6. Ja. the caſe between the King and the Biſhop of Saliſbury, referred to the two Chief Juſtices and Chiefe Baron, by the Lords of the honorable Order of the Garter, was this. King E. 4. by his Letters Patents in French, bearing date 10 Octobris, Ann. 15. of his reign, reciting, that where there was no Office of the Chancelor of the Garter, that there ſhould be ſuch an Office of the Chancelor of the Garter, and that none ſhould have it but the Biſhop of Saliſbury for the time being: We will and ordaine, that Richard Beauchampe, now Biſhop of Saliſbury, ſhould have it for his life, and after his deceaſe, that his Succeſſors ſhould have it for ever. And amongſt divers other points it was reſolved unanimouſly, that this grant was void, for that a new Office was erected, and it was not defined what jurisdiction or authority the Officer ſhould have, and therefore for the incertainty it was void. Which being reported to the Lords, they were well ſatisfied therewith, and thereupon the Office was granted to Sir John Herbert the Kings Secretary.

¶ A Court of Record.] Where it is to be noted, that albeit the proceeding in this Court be in Engliſh, yet it is a Court of Record by expreſſe words of the Act.

¶ And ſhall have alſo a Seal, &c.] This is alſo neceſſary to a Court.

¶ That all Wards, &c.] This Clauſe extendeth as well to the Counties Palatines of Lancaſter, Cheſter, and Dureſme, as to any other the parts of the Realm of England, but in ſeverall manners. For as to the Wards within the Realm of England (out of the ſaid Counties Palatines) the Writ for the finding of the Office, &c. iſſueth out of the Chancery of England, returnable in the Chancery of England. And as to the Wards in the Counties Palatines of Lancaſter and Dureſme, the Writ likewiſe iſſueth out of the Chancery of England, but is returnable into the Chancery reſpectively of theſe two Counties Palatine, and the Chancelors thereof are to tranſcript them into the Court of Wards.

V.Rot.Parl. 9. R. 2 nu. 13.the reſolution of all the Judges of Engl. what right the Duke of Lancaſter had to the Wardſhip of Iſabel the Heire of Tho: of Lathom whom Sir Iohn Stanly had married, for the mannor of Lathom holden of him in chiefe as of his County Palatine.

[a] But for Wards in the County Palatine of Cheſter, no writ iſſueth out of the Chancery of England, but it ought to be found by force of a Writ or Commiſſion out of the Chancery there in the Exchequer, and tranſcripted by the Chamberlain of that County Palatine into the Court of Wards. [b] Nos dum hæredes in cuſtodia noſtra exiſtunt, indemnes & ſine exhæredatione conſervare tenemur.

[a] 14 Eliz. Dier. 303.
[b] Mich. 26 E. 1. coram Rege. Buck. William de Ludares caſe.

[c] And by this Clauſe of this Act of 32 H.8. the power that the Lord Chancelor and Treaſurer had for letting of Wards lands, &c. is taken away.

[c] 8 H.6.cap.16. 18 H.6.cap.6.

[d] By the ſtatute of 18 El. it is enacted, That all Inquiſitions & Offices to be found before any Eſcheator or Commiſſioners, by vertue of any Writ or Commiſſion, or otherwiſe within the ſaid County Palatines of the ſaid Duchy of Lancaſter, Cheſter, and Dureſme, or any of them, ſhall be returned by the ſaid Eſcheators or Commiſſioners within one moneth next after the taking of any ſuch Office or Inquiſition into ſuch place or places, and to ſuch office and offices, as heretofore they have uſually been accuſtomed to be certified and returned into, upon paine to forfeit for every default xl. li. to the uſe of our ſaid Soveraigne Lady, her heirs

[d] 18 Eliz.cap. 13.

and

and ſucceſſors. And that the Clerk of the ſaid Duchy of Lanc', the Vicechamberlain of the ſaid Earldome of Cheſter, and the Chancelour of the ſaid County Palatine of the ſaid Biſhoprick of Dureſme, or other the ſaid Officers or Miniſters within the ſaid Counties Palatines, or their Deputy or Deputies, and every of them for the time being having authority to receive any ſuch Office or Inquiſition, to whoſe hands any ſuch Office or Inquiſition ſhall come to, ſhall certifie or cauſe to be certified under his or their hands in parchment the true tranſcript of every ſuch Office or Inquiſition taken before any of the ſaid Eſcheators or Commiſſioners unto the Maiſter of the ſaid Court of Wards and Liveries, in ſuch like manner, form and ſort, as is limited and appointed the Clerks of the Petit Bag in her Highneſſe ſaid Court of Chancery to tranſcript the ſame, upon pain to forfeit for every ſuch default 5 li. to the uſe of our ſaid Soveraigne Lady, her Heirs and Succeſſors: which tranſcript ſo to be certified ſhall there remaine of Record in like manner and form to all intents and purpoſes, as the tranſcripts of other Offices already certified into the ſaid Court by the Clerks of the Petit Bag in her Majeſties high Court of Chancery, are uſed: any Cuſtome, Statute, Act, Proviſo or Proviſoes heretofore had, made, or uſed to the contrary in any wiſe notwithſtanding.

The ſtatute of 32 H. 8. **for erection of the Court of Wards extended only to Wards: but the ſtatute of** 33 H. 8. **annexeth to this Court Liveries alſo. Now in what caſes the Heire ſhall be in Ward or ſue his Livery, either by the Common law, or by the ſtatutes, & ſpecially of** 32 H. 8. & 34 H. 8. &c. **and of all incidents to the ſame, you ſhall reade plentifull matter both in the** Firſt part of the Inſtitutes Cap. Eſcuage. & Cap. Service de Chivalier: **And alſo in the Books of my Reports.**

¶ Which the Kings Highneſſe, &c.] **Although ſucceſſors be not here named, yet (Kings Highneſſe) being ſpoken in his Royall and politick capacity, which never dieth, doth extend to his Succeſſors: otherwiſe this Court had been diſſolved by the demiſe of** H. 8.

[a] **All the Juſtices in Ireland certified,** Quod homagium tantum dat ſecundum conſuetudinem terræ Hiberniæ cuſtod' & maritag', licet ſervicium militare non debeatur.

[a] Mich. 7 E. 1. in Banco. Rot. 116. Warw. Abbot of Malmſburies caſe.

¶ [b] Intitled to have] **That is by Office to be found.**

[b] See 33 H. 8. cap. 22. A proviſo for the Duchy of Lancaſter.

¶ With their Manors and Lands, &c.] **This Clauſe extendeth only to the Inheritances of the Ward, and not to any of his goods or chattels, debts or duties, &c. but hereof more ſhall be ſaid hereafter in his proper place.**

¶ In the order, ſurvey and governance of the ſaid Court.] [c] **The generall words of this Act extend not into Ireland, for that is a divided, and diſtinct Kingdome, and hath a proper Seale.** [d] **Nor to the Iſle of Man, becauſe it is no part of the Realm of England, and out of the power of the Chancery of England, and not to be bound by our Parliament of England, but by ſpeciall name.**

[c] 14 Eliz. Dier 303.

[d] Mich. 14 H. 8. *Tenus per Brudnel, Brook & Fitz.* in Keylways Report. And ſo was it holden Trin. 40 Eliz. by Popham, Anderſon, & Peream, upon a caſe referred to them by the Lords of the Councell, between the Earle of Derby and the Heirs generall.

¶ And that the Maſter of the ſaid Wards] **By this Clauſe the Maſter only hath power to award Proces.**

¶ Such Proces and Precepts with reaſonable pains therein limited, as be now commonly uſed in the Court of the Duchy Chamber of Lancaſter being at Weſtm.] [e] **Note, the Duchy of Lancaſter was created a County Palatine by Act of Parliament in** Anno 50 E. 3. Adeo plene & integre ſicut comes Ceſtriæ infra eundem com̃ Ceſtriæ dignoſcitur obtinere. **And hereupon the Court of Wards is well warranted to be a Court of Equity, and accordingly from the erection hereof it hath proceeded.**

[e] See more hereof in the Chapter of the Court of the Duchy of Lancaſter. And Pl. com. fo. 214. & 215.

¶ [f] For or concerning the Title of the Kings Majeſty.] **This is evident.**

[f] Pl. com. fo. 115. 116. in *Townſends* caſe.

¶ And that the Maſter of the Court of Wards for the time being ſhall make and appoint all and ſingular particular Receivers, Feodaries, and Surveyors in every Shire, and alſo fees for the execution of the ſame under the Seale of the ſame Office in ſuch wiſe as the ſame Officers may be alwayes removeable at the diſcretion of the ſaid Court.]

Feodarius

Feodarius or Feudatorius is derived a Feodo seu Feudo, which in one sense signifieth a * Seigniory or Tenure: His Office consisteth principally in three things: 1 and principally to be skilfull in the knowledge of the Kings Tenures within his Office out of Records and authenticall Books. 2 At the finding of Offices to doe his uttermost indeavour to manifest the truth concerning the Kings Tenures. 3 After the Office found to survey the Wards lands, and rate it.

* See the first part of the Inst. Sect. 1.

¶ Or other cause in any wise touching or concerning any thing appointed to the order of the said Court, for, and on the behalfe of our Soveraigne Lord the King.] By this Clause, if the Heir within age and in Ward have any goods and chattels, debts, duties or other thing due unto him, an information may be exhibited by his Majesties Attorny of his Wards for his Majesty on the behalfe of the Heir; for this doth touch or concern the value of the Wardship of the body, which is appointed by this Act to the order and survey of this Court, for the value of the mariage is hereby advanced. But if the Heir at the death of his Ancestor be of full age, seeing the primer seison is certain, no suit can be in this Court for any goods, chattels, debts, &c. belonging to the Heir of full age: * for this doth not in any wise concern any thing appointed to the order of this Court, viz. neither the Wardship of the body, or of the lands of the Heire.

See Pl. Com. fo. 295. Carils case.
See Mag. Car. cap. 5. The stock of goods shall be restored to the heire.
Glanvil fo. 54.
Fleta li. 1. ca. 11.
* Prærogativa regis. cap. 3.

¶ Also be it enacted that the said Attorny Receiver Generall, and Auditors, &c.] The Judges of this Court are the Master, the Surveyor, the Attorny, Receiver Generall, and the Auditors of that Court. For the words of the statute of 32 H. 8. are, That the said Attorny, Receiver Generall, and Auditors, shall diligently from time to time attend upon the said Master in the said Court for the hearing and ordering of matters and causes, &c. and the statute of 33 H. 8. hath added the Surveyour in the second place in that Court: and albeit honoris causa, they are to attend on the Master, as the chief and principall Officer of the said Court, for so he is stiled by both the said statutes: yet such attendance is for the hearing and ordering of matters and causes, &c. which maketh them Judges. And see the Oath of the Surveyour which proveth his Office to be judiciall: for by the statute of 33 H. 8. his Oath is (*inter alia*) That he shall minister equall justice to rich and poore, &c. and that he take no gift or reward for any matter depending, &c. in that Court. And the like Oath in effect taketh the Attorny, the Receiver Generall and Auditors, by the said Act of 32 H. 8. And so it was resolved in Auditor Curles case when Robert Earle of Salisbury was Master of the Wards and Lord Treasurer of England.

Hil. 7 Iac. li. 11: fo. 2. & 3. in Auditor Curles case.

See the statute of Lincolne 29 E. 1. Stanf. Prær. Regis Ca. Reseiser. See a notable case upon that statute within three years after the making thereof. Hil. 32 E. 1. Coram rege. Northampton Jorden Twinewilkes case.

At the Parliament holden 18 Jacobi Regis it was moved on the Kings behalfe, and commended by the King to the Parliament for a competent yearly rent to be assured to his Majesty, his Heirs and Successors, that the King would assent that all Wardships, primer seisons, reliefs for tenures in capite, or by Knights Service should be discharged, &c. Wherein amongst certain old Parliament men these thirteen things did fall into consideration for the effecting thereof.

1 That it must be done by Act of Parliament, and otherwise it cannot be done.

2 That all Lands, Tenements, Rents, or Hereditaments, holden of the King, to be holden by fealty only, as of some honour, and such rent, as is now due.

3 That all lands holden of Subjects, Bodies Politick or Corporate, by Knights service to be holden by fealty, and such rent, as is now due: for if lands should be holden of them by Knights service, the same might come to the King.

4 All Subjects, Bodies Politick and Corporate to be disabled to take any Lands,

Lands, Tenements, Rents, or Hereditaments of the King, his Heirs, or Succeſſors by any other tenure, then by fealty only, and yearly rent, or without rent of ſome honour.

5 No Subject, Bodies Politick or Corporate, to create by any licenſe, or any other way or meanes, any other tenure then by fealty and rent, or without rent upon any eſtate in fee-ſimple, fee-tayl, or otherwiſe.

6 In reſpect of the ſaid diſcharge and freedome of the ſubjects and their poſterities, and that they ſhall be alſo diſcharged thereby of fines and licenſes of alienations, reſpect of homage and reliefs; * a Competent rent to be aſſured to the King, his Heirs, and Succeſſors of greater yearly value then he or any of his predeceſſors had for them all, which rent is to be inſeparably annexed to the Crown, payable at the Receipt only.

* firſt ſearch muſt be made what the King hath been anſwered for theſe, &c.

7 A convenient rent to be aſſured to the Lords for every Knights fee, and ſo ratably.

8 Commiſſions for the finding out of the tenures of the King, and the Subject to be returned, &c.

9 Ideots and Madmen to be in the cuſtody of ſome of their kindred, &c. and not of the King, his Heirs or Succeſſors.

10 The Court of Wards to be diſſolved with Penſions to the preſent Officers.

11 Proviſion to be made for regulating of Gardein in Socage, and that the Anceſter may appoint Gardians, &c. and that no Gardian ſhall make a grant to the King.

12 Proviſion to be made that Biſhops ſhall continue Lords of Parliament, notwithſtanding their Baronies be holden in Socage.

13 That the Act ſhall be favourably interpreted for diſcharge of all Wardſhips, &c.

Which motion, though it proceeded not to effect, yet we thought good to remember it, together with theſe conſiderations; * hoping that ſo good a motion tending to the honour and profit of the King and his Crown for ever, and the freedom and the quiet of his Subjects & their poſterities, will ſome time or other (by the grace of God) by authority of Parliament one way or other take effect and be eſtabliſhed.

* *Spes eſt vigilantis ſomnium.* Hope is the dreame of a waking man.

And we will conclude this Chapter with holy Scripture: Deus eſt pater Orphanorum, & Judex viduarum. And again, Deus cuſtodit advenas, pupillum, & viduam ſuſcipiet. And laſtly, in Deuteronomy 27.19. Maledictus eſt qui pervertit judicium advenæ, pupilli, & viduæ.

Pſal. 46.9. & 67.6.

Deut. 27.19.

CAP.

CAP. XXXVI.

The Court of the Duchy Chamber of Lancaster at Westm'.

FOrasmuch (as it hath been said) the Court of Wards hath some reference to this Court of the Duchy, we thought it fit to treat of this Court of the Duchy next after the said Court of Wards, for that it may give some light thereunto. Now for that the County of Lancaster is a County Palatine, it shall be necessary to shew the beginning and erection thereof.

Rot. Pat. Anno 29 E. 3.

King Edward the 3 created John his fourth son Earl of Richmond, Anno Domini 1355. He 19 Maii Anno Domini 1359. married Blanche youngest daughter of Henry Duke of Lancaster (the second Duke that England saw.) Duke Henry died of the plague, Anno 35 E. 3. At the Parliament holden Anno 36 E. 6. the King in full Parliament did gird his son John with a sword, and set on his head a Cap of Furre, and upon the same a circle of gold and pearls, and named him Duke of Lancaster, and thereof gave to him, and to his heirs males of his body, and delivered him a Charter.

Rot. Par. 36 E. 3. nu. 36, 37. Rot. Pat. Anno 36 E. 3.

In full Parliament, Anno 50 E. 3. the King erected the County of Lancaster a County Palatine, and honoured the Duke of Lancaster therewith for tearm of his life in these words.

Rot. Pat. Anno 50 E. 3. See the 2. part of the Inst. Mag. Cart. c. 31. 31 H. 6. fo. 13. the King may make a County Palatine by his Letters Patents without Parliament.

Edwardus Dei gratia, &c. Sciatis quod si nos debita consideratione pensantes gestus magnificos cunctorum qui nobis in guerra nostris laudabiliter & strenue servierunt, ipsos desideremus honoribus attollere, & pro viribus juxta merita præmiare, quanto magis filios nostros, quos tam in sapientia, quam in gestu nobili alios præcellere conspicimus, & qui nobis locum tenuerunt, & tenere poterunt potiorem, nos convenit majoribus honoribus & gratiis prærogare? Considerantes itaque probitatem strenuam, & sapientiam præcellentem charissimi filii nostri Johannis Regis Castellæ & Legionis, Ducis Lancastriæ, qui laboribus & expensis semper se nobis obsequiosum exhibuit pro nobis pluries in necessitatibus intrepide se guerrarum discriminibus exponendo, & volentes eo prætextu, ac desiderantes eundem filium nostrum aliquali commodo & honore ad præsens (licet non ad plenum prout digna merita exposcunt) remunerare; ex certa scientia nostra, & læto corde [a] de assensu Pralatorum & procerum in instanti Parliamento nostro apud Westm convocat existen: [b] Concessimus pro nobis & hæredibus nostris præfato filio nostro quod ipse ad totam vitam suam habeat infra Comitatum Lancastriæ Cancellariam suam, ac Brevia sua sub sigillo suo pro officio Cancellarii, deputando, consignando Justiciarios suos tam ad Placita Coronæ, quam ad quæcunque alia Placita communem legem tangentia, tenenda, ac cognitiones eorumdem, & quascunque executiones per brevia sua & ministros suos faciendas, Et quæcunque alia libertates & jura regalia ad comitatum Palatinum pertinentia, adeo libere & integre sicut comes Cestriæ infra eundem Comitatum Cestriæ dignoscitur obtinere, &c.

[a] De assensu Prælatorū & procerū 22 E. 4. 16.

[b] 5. things to be observed for erecting a County Palatine.
1 Cancellaria.
2 brevia sub sigillo suo.
3 Justiciarios suos tam ad Placita Coronæ quā alia placita, &c.
4 Quæcunq; alia jura regalia ad Com' Palatinum pertinentia.
5 Adeo libere & plene prout comes Cestriæ.
See 19 H. 6. 12. 11 E. 4. 8.

[c] But it appeareth by the book of 26 E. 3. 59. b. that the said Henry Duke of Lancaster had the like grant; for there in a Præcipe the tenant vouched, and that he might be summoned in the County of Lanc', and the Vouchee challenged, because in the County of Lancaster the Kings writ did not run, sed non allocatur, but a writ sent to the Duke or to his Lieutenant to summon the Vouchee in the same manner as it should be done in Chester. Vid. 39 E. 3. Voucher 198.

[c] 26 E. 3. 59. b.

Divers have Counties Palatines that are not Earls, as shall appear hereafter.

It is called Comitatus Palatinus, a County Palatine, not à Comite in respect of the dignity of an Earl, but à Comitatu, & à Palatio regis, because the owner thereof, be he Duke or Earl, &c. hath in that County Jura regalia, as fully as the King

King had in his Palace, from whence all Juſtice, Honors, Dignities, Franchiſes and Priviledges, as from the fountain, at the firſt flowed. Neither by this Chapter was the Duke of Lancaſter created Count Palatine, but the County was made a County Palatine. The power and authority of thoſe that had County Palatines was King-like, for they might pardon treaſons, murders, felonies, and outlawries thereupon. They might alſo make Juſtices of Eire, Juſtices of Aſſiſe, of Gaol-delivery, and of * the Peace. And all originall, and judiciall writs, and all manner of indictment of treaſons and felony, and the proceſſe thereupon were made in the name of the perſons having ſuch County Palatine. And in every writ and indictment within any County Palatine, it was ſuppoſed to be contra pacem of him that had the County Palatine. But theſe and ſome others are taken away from them that have ſuch Counties Palatines, and annexed to the Crown, and all writs to be made in the Kings name, but the Teſte is in the name of him that hath the County Palatine: and they ſhall have forfeitures of lands and goods for high treaſon, which forfeiture accreweth by the Common law. But for treaſons or forfeits given after the erection of the County Palatine by any Act of Parliament, they ſhall not have them.

* 20 H.7.6.8.

27 H.8.cap.24.

Paſch. 12 Eliz. Dier 288,289.

Juſtices of Aſſiſe, of Gaol-delivery, and of the Peace are and ever ſince the erection of the County Palatine of Lancaſter have been made and aſſigned by Commiſſion under the Seal of the County Palatine of Lancaſter.

27 H.8.cap.24.

In the County Palatine of Lancaſter fines are levied with three Proclamations, &c. before the Juſtices of Aſſiſe there, or one of them: and all recoveries to be had of any lands or tenements in the County Palatine are to be had in the Court of that County Palatine, and cannot be had at Weſtminſter.

37 H.8.ca. 19. 36 H.6.fo.33. 9 H.7.fo.12.

[a] In treſpaſſe in the County Palatine of Lancaſter, the Defendant pleaded a forain releaſe, the Court preſixed a day to the parties in Bank, the Record muſt be removed by Certiorari in Chancery, and by Mittimus into the Bench, there to be tryed.

[a] 22 H.6. 8.

[b] 27 E.3.84. 21 H.7.33. 39 H.6.21,22.

[b] If iſſue be joyned in the Kings Bench, or Common Bench tryable in the County Palatine of Lanc', it ſhall be tryed in the County of Lanc' and remanded hither.

19 H.6.12. 32 H.6.25. 19 E.3.tit.ial 66. 45 E.3. Viſne 50.

[c] Where a releaſe or other ſpeciall deed is pleaded in bar in any Court at Weſtminſter, within a franchiſe where the Kings writ runneth not, it ſhall be tryed where the writ is brought. See the books quoted in the margent. And in this variety of opinions I hold the law to be, that this ſtatute of 9 E. 3. extends not to caſes when any other iſſue is joyned tryable in the County Palatine or other franchiſe: And I ground my opinion upon the reſolution of all the Judges of England in the Exchequer Chamber, in Anno 32 H. 6. 25. See 39 H. 6. 21, 22. 21 H.7.33. 21 E. 4. 33, 34, 35, 36.

[c] 9 E.3.cap.4. 8 Aſſ.27. 1. E. 3. 41.19 H.6.12. 53. 21 E.4.8.2. & b. 27 E.3.84. 46 E.3. Viſne 53. *Per touts les Juſtices.* 10 H.4.40. 10 H.6.15,16. Per Martyn. 8 H.6.3. per Strange. Lib.Int. Raſtall fol.

Vid. Lib. Intr. fo. 81, 82. pl.8. Henry Parayes caſe in debt. In Camera Guildhall Civitatis London.

[d] King H. 4. by his Charter by Authority of Parliament, Anno primo of his reign, doth ſever the poſſeſſions of the Duchy, &c. from the Crown: And that which John of Gaunt held for life, is eſtabliſhed for ever, and [e] ſpecially by the ſtatutes of 1 E. 4. and 1 H. 7. hereafter mentioned: and this ſeparation H. 4. made, for that he knew he had the Duchy of Lancaſter (par multis regnis) by ſure and undefeſible title: and he could not be both Rex and Dux, but ſpecially that his title to the Crown was not ſo aſſured, for that after the deceaſe of R. 2. the right of the Crown was in the heir of Lionell Duke of Clarence, ſecond ſon of E. 3. John of Gaunt Father of H. 4. being the fourth ſon: and therefore he intended not, that by the law of the Crown the Duchy ſhould go with the Crown, & that he ſhould be ſeiſed thereof in right of the Crown, as the King afterwards was of the poſſeſſions of the Duchy of York, Earldome of March, and others.

[d] Rot.Par. 1 H. 4. intituled Carta Regis H.4. *De ſeparatione Ducatus Lancaſtriæ a Corona authoritate Parliamenti anno regni ſui primo.*

[e] Rot.Par. 1 E.4. Pl. Com. 219.b.

Humphry de Bohun Earl of Hereford, Eſſex and Northampton being the firſt and laſt Earl of that name, and ſeiſed of large poſſeſſions in England and Wales, had iſſue two daughters; * Eleanor the eldeſt married to Thomas Duke of Glouc', and Mary married to the Earl of Hertford.

* Vide Rot. Parl. 1 H.6. Partition recited an. 9 H. 5. between H. 5. and the ſaid Eleanor.

Rot.Par.Anno 2 H.5.nu.30. 3 H.5.nu.15. confirmed,and that no land ſhould paſſe of Duchy, but under the Duchy ſeal. 2 & 3 Ph.& Mar.cap 20.

It is enacted that all the Manors and hereditaments which deſcended to H. 5. after the deceaſe of the ſaid Mary his mother, as ſon and heir unto her, ſhould be diſſevered from the Crown of England, and annexed to the Duchy of Lancaſter, and to be of the ſame nature, as by the Kings Letters Patents eſtabliſhed by Parliament there appeareth; where you may read of many Franchiſes and Liberties belonging to the Duchy.

[a] See the 1.part Inſt.Sect.8.

[a] Here it is to be obſerved, that albeit theſe poſſeſſions deſcended to King H. 5. as heir to his mother, yet he was thereof ſeiſed in Jure Coronæ, and therefore this Act diſſevereth them from the Crown.

[b] Rot Par.1 E.4. nu. 26. Pl.Com.222. Vid li,5.fo.the Princes caſe.

[b] The Duchy of Lancaſter as ſeparated, &c. is by Act of Parliament aſſured to E.4. and his heirs Kings of England. By this Act all intails of the Duchy, or of any land annexed thereunto are cut off, and by this made fee ſimple to E. 4. and his heirs Kings of England. In an Act of Parliament without queſtion this limitation of a fee ſimple is good. See the whole Act.

[c] Rot. Par.1 H.7. * Neta his heirs without ſaving (Kings of England) is E.4.did. 21 E.4.60.

[c] It is enacted that H. 7. ſhould have,hold,and enjoy to him and his * heirs forevermore the County Palatine of Lancaſter, and all honors, &c. By which Act alſo all former intails are cut off, and in this ſtate doth the Duchy ſtand at this day.

[d] Vid.Dier 1 El. 168. b.

[d] All lands, &c. parcell of this Duchy given to the King by the Statute of Monaſteries, Chanteries are ſtill within the ſurvey of the Duchy. Within the County Palatine of Lancaſter the Duke having Jura Regalia, his juriſdiction and privileges therein were very great.

[e] 32 H. 8.cap. 20. 1 E.6.cap.14. 1 El. cap. 31.

[e] The Duke of Lanc' complaineth by mouth to the King, Biſhops, and Lords in full Parliament; That where after the death of Thomas of Lathome who held the Manor of Lathome in the County of Lanc' of the ſaid Duke in Chevage, whereby the manor was ſeiſed into the hands of the ſaid Duke of Lancaſter according to his County Palatine of Lancaſter,yet notwithſtanding John Stanley Knight as in the right of Iſabel his wife daughter & heir of the ſaid Thomas entred, and taken the profits of the ſaid manor without any livery or other ſuit made in the Chancery of the ſaid Duke for which he praped remedy. After which, upon full advice of the Juſtices of both Benches, and others of the Kings learned Councell, it was declared in the ſaid Parliament, that the entry of the ſaid John into the manor, as aforeſaid, was unlawfull, and that the ſaid John ought to make ſuit by petition, or otherwiſe in the Chancery of the ſaid Duke for the livery of the ſaid manor in ſuch caſe to be ſued for.

[f] Rot.Par.9 R.2. nu.13. 28 H.8. Brook Livery 55. Livery within the County Palatine, but not of a renure without. 26 H.8.5.

Of the Franchiſes and Liberties belonging to the County Palatine of Lanc' you may read Rot. Par. 2 H. 5. Ubi ſupra.

[f] Lands to be annexed to this Duchy under the Great Seal ſhall be as good, as if it had been annexed by Parliament.

See the ſtatute of 5 El. cap. 23. concerning writs of Significavit, and Excommunicato capiendo.

Vid.33 H.8.c.39. 22 H.8.c.20. 3 E.6.cap.Cuſtos Rotulorum.

Lands within the County Palatine ſhould paſſe by the Dukes Charter without livery of ſeiſon or attornment, but of lands parcell of a manor annexed to the Duchy without the County Palatine, there ought to be livery of ſeiſon, and attornment of tenants, and in the ſame degree is it in the Kings caſe. The reaſon hereof is, for that the County of Lanc' was a County Palatine, and the Duke then had Jura Regalia.

[g] 2 & 3 Ph.& Mar.cap.20.

21 E.4.60.71. Pl.Com.219.

The proceeding in this Court of the Duchy Chamber at Weſtm' is as in a Court of Chancery for lands, &c. within the ſurvey of that Court by Engliſh bill, &c. and decree; but this Chancery Court is not a mixt Court as the Chancery of England is, partly of the Common law, and partly of Equity, as hath been ſaid. See before in the Chapter of the Court of Chancery.

Vid.33 H.8. cap.39. which ſee before in the Chapter of the Court of Wards See 27 H.8.c1,11. there alſo is a Chancelor of the County Palatine.

The proceſſe is by Privy Seal, Attachment, &c. as in the Chancery.

The Officers of this Court be the Chancelor, the Atturny, the Receiver generall, Clerk of the Court, the Auditors, Surveyors, the Meſſenger. There is an Atturney of the Duchy in the Chancery, and another in the Exchequer, There be four learned in the law Aſſiſtants, and of Councell with the Court.

Hil.1 E.6.Brook Travers.53.

Where by office a tenure is found of the King Ut de Ducatu Lancaſtriæ, and in truth

truth it is not ſo, there needeth no traverſe, for the King hath the Duchy * as Duke and not as King, and a man ſhall not traverſe, but where it is found † for the King: Sed aliter utitur in diebus noſtris, as it appeareth in the caſe following.

* *In hoc erratum eſt*, as it appeareth in Pl. Com. Ubi ſupra.

† It is found for the King, for he is not Duke.

Le roy (*in droit de ſon Duchie de Lanc'*) *Segnior, Rich. Hulme ſeiſie del Mannor de Male in le Countie de Lanc' tenus del roy come de ſon dit Duchie per ſervice de Chivalry Meſne, & Robert Male* (*ſeiſie des terres in Male tenus del Meſne come de ſon dit Mannor per ſervice de Chivalry*) *Ten'. Rich. Hulme moriſt; Apres que mort* Anno 31 H. 8. *fuit trove que il moriſt ſeiſie del dit meſnaltie, & que ceo diſcend al Edmonde ſon fitz deins age, & trove le tenure avandit, &c. & durant le temps que il fuit in gard Robert Male le ten' moriſt: apres que mort* Anno 35 H. 8. *fuit trove per office que Robert Male moriſt ſeiſie del dit tenancy peravaile, & que ceo diſcend al ſon fitz & heire deins age, & que le dit tenancie fuit tenus del roy come del dit Duchy per ſervice de Chivalrie* (*en in veritie ceo fuit tenus del Edmonde Hulme adonques in gard in le roy come del dit meſnaltie,*) *per que le roy ſeiſiſt le gard del heire le ten' & puis 4 Jac. Regis nunc apres le mert de Rich. Male que fuit lineal heire del dit Robert Male, per un auter office trove fuit que le dit Rich. moriſt ſeiſie del dit tenancy, & ceo teignoit del Roy come de ſon Duchy per ſervice de Chivalry ſon heire deins age, Sur ceo Rich. Hulme couſin & heire del dit Rich. Hulme, ad preferre un bill deſtre admit a ſon travers de ceſt darrein office trove in* Anno 4 Jac. *Le queſtion fuit, le quel loffice trove in* 35 H. 8. *ſoit aſcun eſtoppel al dit Hulme a traverſer le darrein office, ou ſi le dit Hulme ſerra chaſe primerment a traverſer loffice de* 35 H. 8. *Et fuit object que il doit primerment travers loffice in* 35 H. 8. *come in le caſe de* 26 Ed. 3. fol. 65. *que ſi 2. fynes ſont levy de terre in ancient demeſne, le Segnior de que la terre eſt tenus, doit aver briefe de diſcent a reverſer le primier fine, & in ceo le 2 fine ne ſerra barre. Et que le primier office eſtoppera cy longe come ceo remaine in force. A que fuit reſponde & reſolve per les 2 Chief Juſtices, & Chief Baron, & le Court de Gards, que le trover dun office neſt pas aſcun eſtoppel, car ceo neſt que enqueſt doffice, & le party greve avera travers a ceo come ad eſtre confeſſe, & pur ceo ſans queſtion ceo neſt pas eſtoppel; mes quant office eſt trove fauxement que terre eſt tenus del roy per ſervice de Chivalry in capite, ou in verity la terre eſt tenus del auter ſegnior, ou del roy meſme in Socage, ſi le heire ſua generall livery, eſt tenus in* 46 E. 3 12. *per Mowbray & Perſey que il navera ſute apres d' averre que la terre neſt pas tenus del roy, &c. mes ceo neſt forſque eſtoppel al heire meſme que ſua la livery & ne concludera ſon heire: Car iſſint dit Mowbray meſme, expreſment in autiel caſe in* 44 Aſſ. pl. 35. *que eſtoppel per ſuer de livery eſtoppera ſolement meſme le heire durant ſon vie: Et in* 1 H. 4. fo. 6. b. *la le caſe eſt myſe de expreſſe confeſsion & ſuer de livery per liſſue in tail ſur faux office, & la eſt tenus que les Jurors ſur novel* Diem clauſit extremum *apres le mort de tiel heire ſont alarge ſelonque lour conſcience a trover que la terre neſt pas tenus, &c. car ilz ſont jure* ad veritatem dicendam, *& lour trover eſt appel* veredictum quaſi dictum veritatis: *quel reaſon auxi ſerve quant le heire in fee ſimple ſuiſt livery ſur faux office que les Jurors apres ſon mort doient trover ſelonque le verity, iſſint eſt dit in* 33 H. 6. fo. 7. *per Laicon que ſi 2 ſoers ſont trove heires, dont lun eſt baſtard, ſilz joine in ſute de livery, ceſti que joine ove le baſtard in livery ne alledgera baſtardy in l' aut',*

Hulmes caſe, Mich. 7 Jac. in Curia Wards. Travers de office Eſtop; pel per ſuer de livery.

26 E. 3. fol. 65.

46 E. 3. 12.

44 Aſſ. pl. 35.
1 H. 4. 6. b.

33 H. 6. fol. 7 per Laicon.

mes nul Livre dit que leſtoppel indurer' pluis longement que durant ſon vie. Et quant livery eſt ſue per un heire, le force & effect del record de ceſt livery eſt execute & determine per ſon mort & pur ceo le eſtoppel expirer' ove le mort le heire; mes ceo eſt deſtre intend dun generall livery, car ſpeciall livery ne concludera omnino, come appear apres. Les parols de generall livery, quant le heire eſt trove de pleine age, ſont. Rex Eſcaetori, &c. Scas quod cepimus homagium I. filii & hæredis B. defuncti de omnibus terris & tenementis quæ idem B. pater ſuus tenuit de nobis in Capite die quo obiit, & ei terras & tenementa reddidimus, Et ideo tibi præcipimus, &c. eidem I. de omnibus terris & tenementis prædict', &c. plenam ſeiſinam habere fac', &c. *Et quant le heire fuit in gard a ſon plein age, le breife de livery dirra.* Rex, &c. Quia I. filius & hæres B. defuncti, qui de nobis tenuit in capite, ætatem ſuam coram te ſufficient' provabit, &c. cepimus homagium ipſius I. de omnibus terris & tenementis quæ idem B. pater ſuus tenuit de nobis in Capite die quo obiit, & ei terras & tenementa reddidimus: Et ideo tibi præcipimus, ut ſupra. *Quel breif eſt le ſute del heire & pur ceo coment que touts les parols del breif ſont les parols le roy (come tout les breifs le roy ſont) & coment que le breif de livery eſt generall,* de omnibus terris & tenementis de quibus B. pater I. tenuit de nobis in capite die quo obiit, *ſans direct affirmac' que aſcun Mannor in particuler eſt tenus* in capite, *& nien obſtant que ceo neſt forſque proſecution dun breif le roy, & nul judgment ſur ceo; uncore intant que generall livery eſt foundue ſur loffice, & per loffice fuit trove que divers terres & tenements fuer' tenus del roy* in capite, *a ceſt cauſe le ſuer de ceſt breif concluder le heire ſolement que ſuiſt le livery, & apres ſon mort les Furors in novel breif de* Diem clauſit extremũ *ſont alarge, come eſt avandit, & ſi ceſti Fury trove fauxment tenure del roy, auxi le Segnior de que la terre eſt tenus poet travers ceſt office, ou ſi terre ſoit tenus del roy, &c. in Socage, le heire poet travers ceſt darrein office, car per ceo il eſt greve ſolement, & ne travers le primer office, & quant le pier ſuiſt livery & mort, le concluſion eſt execute & paſt come eſt dit adevant. Et* nota, *la eſt un ſpeciall livery, mes ceo proceade de grace le roy, & neſt pas ſute le heire, & le roy poet grante ceo ou al plein age devant* ætate probanda, &c. *ou al heire deins age come appiert in* 21 E.3.40. *et ceo eſt generall, & ne affirm directment aſcun tenure come le generall livery fiſt, mes ove un,* ut dicitur, *& pur ceo neſt aſcun eſtoppel ſans queſtion, Et al common le ſpeciall livery poet aver eſtre grant devant aſcun office trove, mes ore per leſtatut de* 33 H.8 cap.22. *eſt purvien,* That no perſon or perſons having lands or tenements above the yearly value of 5. l. ſhall have or ſue any livery before Inquiſition or Office found before the Eſcheator or other Commiſſioner, *mes per un expreſſe clauſe in meſme lacte,* livery may be made of the lands and tenements compriſed or not compriſed in ſuch offices. *Iſſint ſi office ſoit trove daſcun parcell, &c. ceo ſuffiſt, & ſi le terre trove, in loffice nexceade 20. l. donques le heire poet ſuer generall livery apres office ent trove, come eſt avandit; mes ſi la terre nexceade 5. l. per annum, donques generall livery poet eſtre ſue ſans office ent trove per garrant del Maſter de gards, &c.* Vid. Dier 23 El. 377. *que le Roigne,* ex debito Juſtitiæ, *neſt lye a ceſt jour puis le dit Act de* 33 H. 8. *a graunter ſpeciall livery, mes eſt a ſon election a graunt' ſpeciall livery, ou a chaſer le heir a un generall livery.*

21 E.3.40.
46 E.3.33.
46 Aſſ. p.
47 E.3.21.
29 Aſſ.p.8.
33 H.6.50.
21 H.6.28.
37 H.8 B Eſtoppell 218.7 E.6.
ibid.222.
See 4.part Inſt. Cap.Pardon.
Mich.39 & 40 El.fol. 397.

Fuit

Fuit auxi reſolve in ceſt caſe que loffice de 35 H.8. *ne fuit pas traverſable, car ſon travers demeſne provera que le Roy aver' cauſe daver gard per cauſe de gard, & quant le Roy vient al poſſeſsion per faux office ou aut' meane ſur pretence dun droit, ou in veritie il nad tiel droit, uncore ſi appiert que le Roy ad aſcun auter droit ou intereſt a aver & tener la terre, la nul traverſera ceſt office ou title le Roy, pur ceo que le judgement in le travers eſt*, Ideo conſideratum eſt quod manus Domini regis à poſſeſſione amoveantur, &c. *Que ne doit eſtre quant appiert al court que le roy ad droit ou intereſt daver la terre, Et ove ceo accord.* 7 H.4. fol. 33. *in le Countee de Kents caſe; & que apres generall livery ſue per le heir de Robert Male le office ne poet eſtre traverſe per ſon heir: Et iſsint auxi fuit reſolve per laſsiſtants del court de Gards in Scurfields caſe in Curia Wardorum.* Tr. 8 Jacobi.

Which caſe we have rehearſed in the ſame language wherein we reported it when it was freſh in memory, and never hitherto was publiſhed.

What Leaſes may be made of lands, &c. within the ſurvey of the Duchy of Lancaſter; See the Ordinances of the Court of Duchy concerning Leaſes to be made, &c. Anno 20 H.6.

See alſo Dier Mich. 6 & 7 Eliz. the reſolution of all the Judges concerning Leaſes made by the Chancelor of the Duchy Chamber. And if the Leaſe either in poſſeſſion or reverſion be made under the Duchy Seal, Quod Dominus Rex de adviſamento & aſſenſu concilii Ducatus Lancaſtriæ dimiſit, &c. the Leaſe is good, although in truth the Chancelor made it, and put to the Seale of the Duchy. For ſuch Leaſes under the Duchy Seal, or under the Seal of the County Palatine of lands within the ſame, are of as great force as lands of the Crown under the Great Seale.

Mich. 6 & 7 Eliz. Dier 232.
27 H.8. ca. 11.
2 Proviſoes.
2 & 3 Ph. & M. cap. 20.
37 H.8. cap. 16.

Albeit by ſpeciall proviſion and conſtruction, to a grant of lands and tenements parcell of the Duchy of Lancaſter that lye out of the County Palatine, there muſt be livery of ſeiſin and Attornament, as the caſe requireth, yet the grant under the Seal of the Duchy is matter of Record in reſpect of the dignity of the perſon of the King, and needeth no delivery to make it a deed (as deeds between ſubjects ought to have) and if the ſame be denied, Non eſt factum cannot be pleaded, but Nul tiel Record.

21 E.4. fo. 62.
Rot. Par. 1 H.4. nu. 81.
Vide Cartam H.4. *de ſeperatione Duca. Lanc. a Corona authoritate Parl. Anno regni ſui.* 1.

And if the King by his Letters Patents under the Seale of the Duchy doth grant a reverſion expectant upon an eſtate for life or years of lands parcell of the ſaid Duchy lying out of the County Palatine, the reverſion doth paſſe maintenant to the Patentee by force of the Letters Pattents: but he ſhall not have an Action of Waſte, or diſtraine before Attornament. For this caſe is like to the caſe of a fine between ſubjects, which is matter of record: and ſo the Kings Letters Patents under the Duchy Seal are as high a matter of record (if not higher then a fine.) And this tendeth both to the honour of the King and the ſafety of ſuch as purchaſe ſuch reverſions of the King, that the eſtate of the reverſion ſhould paſſe by thoſe Letters Patents: otherwiſe if the Patentee dye before Attornament, the Letters Patents ſhould be void, and the validity of the Kings grant ſhould depend upon the pleaſure of the leſſee, and many inconventencies ſhould thereupon follow. And all this appeareth by that great & grave reſolution of the caſe of the Duchy of Lancaſter reported by Mr. Plowden, that no ſtatute now in force doth ſeparate the Duchy from the perſon of the King, nor to have the perſon of the King ſeparate from the Duchy, nor to make the King Duke of Lancaſter having regard to the poſſeſſions of the Duchy, nor to alter the quality of the perſon of King H. 7. but only that the King ſhould have to him and to his Heirs the ſaid Duchy ſeparate from the other poſſeſſions; in which caſe the Duchy at the leaſt is joyned to the perſon of H. 7. and to his Heirs, and the perſon of the King remain as it did before, for nothing is ſaid to the quality of the perſon of the King, nor to the alteration of his name. And the perſon of the King ſhall not be infeebled becauſe the Duchy is given to the King & his Heirs, but remain alwayes of full age, as well to gifts and grants by him made, as to adminiſtration of Juſtice: Wherupon it was reſolved, that Leaſes made by E. 6. being

Rot. Parl. 3 H. 5. nu. 15.
Rot. Parl. 1 E.4. nu. 16.
Rot. Parl. 1 H.7. nu. 2. Seſſ. 1.
1 & 3 Ph. & Mar. cap. 20.
P. 10 H.4. fo. 7. non omittas, &c. per prerogat.
Rot. Parl. 2 H.5. nu. 30.
23 H.6. nu. 17.
12 E.4. uu. 7, 8.
Dier Mic. 6 & 7 Eliz. ubi ſupra.
* Lit. Sect. 580.
1 part of the Inſt. fo. 320.
Plowd. Com. 221. b.
Vide Rot. Parl. 1 H.4. nu. 81. accord.

being within age of lands, either within the County of Lancaster or without parcell of the Duchy (the Royall and politick capacity of the King being not altered) were not voidable by his nonage: A just resolution, and tending to the safety and quiet of Purchasers and Farmors; and proveth direcly that the Royall and politick capacity of the King being not altered (as to these possessions) the Letters Patents of the King of these possessions under the Duchy Seale are of Record: and we finde no opinion in our Books, or any thing in any Record, that we remember, against this. So as the law concerning this point is, That for grants of reversions by Letters Patents under the Kings Seal of the Duchy of Lancaster, there must be Attornament for lands out of the County Palatine to make a privity, as in case of a fine for the action of waste or distresse: but of lands within the County Palatine, the reversions passe by Letters Patents under the Seal of the County Palatine, both for the estate and for the privity of the action and of the distresse: and yet the Seal is as high a matter of Record in the one case as in the other. And herewith agreeth the continuall practise in the Court of the Duchy of Lancaster. For if a reversion be granted under the Duchy Seal in fee or in tail, &c. of the lands of this Duchy expectant upon a Lease for years, life, &c. a Writ in English is usually granted in the Kings name under the Duchy Seal reciting the grant, and commanding the particular Tenant to attorn: or if it be of a Manor in possession, a Writ likewise in English is usually granted commanding the Tenants generally to attorn.

Vide 27 H. 8. cap. 11. for the severall Seals. 23 H. 8. cap. 3. Com. of Sewers under the seal of the Duchy and they be Commissioners of Record.

The Seal of the Duchy of Lancaster remains with the Chancelor at Westm. And the Seal of the County Palatine remains alwayes in a Chest in the County Palatine under the safe custody of the Keeper thereof. All grants and leases of Lands, Tenements, Offices, &c. in the County Palatine of Lancaster shall passe under that Seal and no other: and all grants and leases of Lands, Tenements, Offices, &c. out of the County Palatine and within the survey of the Duchy, shall passe under the Seal of the Duchy, and no other: otherwise such grants and leases shall be void by the apparent intention of the Act.

27 H. 8. cap. 16.

Dier ubi supra.

Pl. Com. 222. See also Pl. Com. 222. notable matter concerning leases made of lands within the Survey of this Court, the King being within age, &c. resolved and decreed to be good.

This County Palatine was the youngest brother, and yet best beloved of all other, for it had more Honors, Manors, and Lands annexed unto it, then any of the rest, by the House of Lancaster, and by H. 8. and Queen Mary, albeit they were descended also of the House of York, viz. from Eliz. the eldest Daughter of E. 4.

* Roya'ties, Franchises, Liberties, &c. Rot. Parl. 2 H. 5. nu. 30. not in print, and established and confirmed Rot. Parliam. Anno 3 H. 5. nu. 15.

* For the great Royalties, Franchises, Liberties, Privileges, Immunities, Quietances, and Freedomes, which the Duke of Lancaster had for him and his men and tenants, see Rot. Parl. die Lunæ post Octab. Sancti Martini An. 2 H. 5. all which are established, ratified and confirmed by authority of Parliament, necessary to be known by such as have any of these possessions.

CAP.

CAP. XXXVII.

Of the County Palatine of Cheſter.

SEeing the erection of the County Palatine of Lancaſter hath reference to the County Palatine of Cheſter, we have thought good to entreat of it in this place, for that one giveth light to the other.

[a] We have ſpoken of the County of Lancaſter raiſed to a County Palatine by Act of Parliament. We ſhall now ſpeake of a County Palatine created by preſcription.

[b] We find that Hugh Lupus ſonne of the Viſcount of Averenches in Normandy by his wife William the Conquerours Siſter was the firſt hereditary Earle of England created by his Uncle the Conquerour Earle of Cheſter, and in the ſtile of a Conquerour, Totumq; hunc comitatū tenendum ſibi & * hæredibus ita libere ad gladium, ſicut ipſe Rex tenebat Angliam ad coronam, dedit. † To this Earldome is annexed the County of Flint in Wales.

This is the moſt ancient and moſt honourable County Palatine remaining in England at this day, * with which dignity the Kings eldeſt ſonne hath been of long time honoured.

By this generall grant this Hugh Earl of Cheſter had Jura regalia within the County, ‖ conſequently had Comitatum Palatinum without any expreſſe words thereof, and by force thereof he created Eight Cheſhire Barons, which was the firſt viſible marke of a County Palatine. That is to ſay, Robert Fitz-Hugh Baron of Malpas, Richard de Vernon Baron of Shibbroke, William Walbank Baron of Nantwich, William the ſonne of Nigil Baron of Halton, Hamond de Maſly Baron of Dunham, Giſlebert de Venables Baron of Kinderton, Hugh the ſonne of Norman Baron of Hawarden, and N. Baron of Stockport. By the ſaid generall grant he had not the patronage and tenure of the Biſhoprick of Cheſter, for thus I read in the Book of Domeſday made in the time of this Hugh Earl of Cheſter. Ceſtreſhire. Tenet Epiſcopus ejuſdem civitatis de rege, quod ad ſuum pertinet Epiſcopatum; totam reliquam terram comitatus tenet Hugo comes de rege.

[c] Britton ſaith, Voilons nous que Juſtices Errant ſoient aſſignes de les Chapters oier & terminer en cheſcun Countye, & en cheſcun Franchiſe de 7 ans en 7 ans, & autiel poer voilons que nous [d] Chief Juſtices de Ireland & Ceſtre eyent.

[e] Within this County Palatine, and the County of the City of Cheſter, there is, and anciently hath been a principall Officer called the Chamberlain of Cheſter, who hath, and time out of minde hath had the juriſdiction of a Chancelour; ‖ that the [g] Court of Exchequer at Cheſter is and time out of mind of man hath been the [h] Chancery Court for the ſaid County Palatine, whereof the Chamberlain of Cheſter is Judge in equity. He is alſo Judg of matters [i] at the Common law within the ſaid County, as in the Court of Chancery at Weſtm. for this Court of Chancery is a [k] mixt Court.

There is alſo a [l] Vice-Chamberlain, which is the Deputy of the Chamberlain. And there is within the ſame a Juſtice called [m] the Juſtice of Cheſter, who hath juriſdiction to hear and determine matters of the Crown, and of Common Pleas. Of fines and recoveries levied and ſuffered as well within the County Palatine of Cheſter as of the City of Cheſter. See the ſtatutes of 2 E.6. ca. 28. & 43 Eliz. cap. 15. But of theſe and other matters concerning this County Palatine we have thought good to ſet down the reſolution of four reverend Judges (whom we knew) upon view of Records and evidences, and mature deliberation thereupon in writing, in theſe words.

[a] 13 E.3. Vouch. 18. 49 E.3.9. 19 H.6.12, 36 H.6.33, 34. 12 E.4.16.

[b] A man may have a County Palatine by preſcription. 2 E 4. 17, 18. 22. 12 E.4. 1^a. 21 R.2.ca.9. Regiſter. 17.a.

[b] This Lupus did bear Azur a head of a Woolf eraſed, argent.

* In feeſimple.

† 21 R.2.cap.9.

‖ 21 R. 2. cap. 9. 17 E 4.ca.1.

Theſe Barons had within their ſeverall Courts conuſans *de omnibus placitis & querelis in curia comitis motis, exceptis placitis ad gladium ejus pertinentibus*, which you may ſee at large, Rot. Inſpex. Pat. An. 18 H.6. parte 2. m. 34.

[c] Brit. f. 1.b. 27 H.8.cap.5.

[d] Chief Juſtice de Cheſter.

[e] 27 H.8. c.5.

[f] Chamberlain of Cheſter.

[g] Court of Eſchequer.

[h] Chācery Court.

[i] At the Common law.

[k] A mixt Court.

[l] Vice Chāberlain.

[m] The Juſtices of Cheſter.

The

Sir James Dier, Weſton. Harpur. Carns. 10 Febr. 11. Reginæ Elizab.

The opinion of Sir *James Dier* Knight, Chiefe Juſtice of the Common Pleas at Weſtminſter, *Richard Weſton* and *Richard Harpur* Eſquires, two other Juſtices of the ſame Common Pleas, and of *Thomas Carns* Eſquire one of the Juſtices of the Pleas to be holden before the Queens Majeſty, declared and preſented to her Highneſſe the 10 day of February *Anno Dom.* 1568. by vertue of her Majeſties Letters to us directed the ſecond day of the ſame moneth concerning the jurisdiction and liberties of the County Palatine of Cheſter, and the authority of the Chamberlain, and his Office there: and concerning the controverſie between the Lord Preſident and Councell in Weles, and the ſaid Chamberlains Office lately grown upon *Thomas Radfords* caſe exhibited unto us: as enſueth.

[a] King H. 7. made it a County of it ſelfe. Camden. 459 a. [b] By preſcription.

Firſt, by that which we have ſeen and conſidered, the County of Cheſter (wherein [a] the City of Cheſter is now, and by a good time paſt hath been a County of it ſelfe) of [b] very ancient time before the reign of King H. 3. hath been, and yet is a County Palatine, with other members thereunto belonging: and ſo from time to time hath been received and allowed in the law. And therefore the laws, rightfull uſages, and cuſtomes of the ſaid County Palatine are to be preſerved and maintained.

The Chamberlain of Cheſter.

It further evidently appeareth, that by the like time of antiquity and continuance, there hath been and yet is in the ſaid County Palatine one principall or head Officer called the Chamberlain of Cheſter, who hath, and ever had all juriſdictions belonging to the office of a Chancelor within the ſaid County Palatine.

The Juſtice of Cheſter.

And that there is alſo within the ſaid County Palatine a Juſtice for matters of the Common Pleas, and the Pleas of the Crown, to be heard and determined within the ſaid County Palatine, commonly called the Juſtice of Cheſter.

Error, forein plea and forein voucher.

We alſo ſee that all pleas of lands or tenements and all other contracts, cauſes, and matters riſing and growing within the ſame County Palatine are pleadable, and ought to be pleaded, heard, and judicially determined within the ſaid County Palatine, and not elſewhere out of the ſaid County Palatine: And if any be pleaded, heard, or judged out of the ſaid County Palatine, the ſame is void, and coram non Judice, except it bee in caſe of Error, Forein plea, or Forein voucher.

Treaſon & error.

We alſo ſee that no inhabitant of the ſame County Palatine by the liberties, lawes, and uſages of the ſaid County Palatine ought to be called or compelled by any Writ or Proces to appeare or anſwer any matter or cauſe out of the ſame County Palatine for any the cauſes aforeſaid, but only in cauſes of treaſon and error. And the Queens writ doth not come, nor ought to be allowed or uſed within the ſaid County Palatine, but under the Seale of the ſaid County Palatine, except Writs of Proclamation by the ſtatute of E. 6. Anno regni ſui primo.

Seal of the County Palatine.

Court of the Exchequer is the Chancery Court.

Chamberlaine Judge of that Court.

A Conſervator of the peace.

It doth further appeare unto us by good matter of Record to us ſhewed, that the Court of the Exchequer at Cheſter is, and by the time of antiquity and continuance aforeſaid hath been uſed as the Chancery Court for the ſame County Palatine, and that the Chamberlaine of Cheſter is the chiefe officer and Judge of that Court, and that he is, and time out of minde hath been a conſervator of the peace by vertue of the ſame office, and hath like power, authority, preheminence, juriſdiction, execution of law, and all others cuſtomes, commodities, and advantages pertaining to the juriſdiction of a Chancelor within the ſaid County Palatine of Cheſter, as the Chancelor of the Duchy of Lancaſter hath uſed, had and ought to have uſed and executed within the ſaid County Palatine of Lancaſter: which more evidently appeareth alſo by the underſtanding of the firſt grant made by King E. 3. to John his ſonne then Duke of Lancaſter, whereby he made the ſame County Palatine of Lancaſter, referring the ſaid Duke to have his Chancelor, liberties, and regall juriſdiction to a County Palatine belonging, adeò libere & integrè, ſicut comes Ceſtriæ infra eundem Comitatum Ceſtriæ dignoſcitur obtinere.

See the grant before.

Vice-Chamberlaine.

Alſo it appeareth unto us that the Vicechamberlaine did lawfully and orderly commit to priſon Thomas Radford **named in the caſe preſented unto us, for that he**

he refuſed to put in ſureties of the peace within the ſaid Exchequer upon Affidavit made in that behalfe. And that the proceedings of the Councel of the Marches touching the enlargement of the ſaid Radford from the ſaid impriſonment, and alſo their further order and dealing againſt the ſaid Vicechamberlaine was, and is without ſufficient authority, and contrary to the jurisdiction of the office of the ſaid Chamberlain, and the ancient lawes and liberties of the ſame County *&c.* Councel of the Marches.

...doe alſo affirm that the ſtatute of 34 and 35 H.8. called the Ordinances whereby the authority of the Lord Preſident and Councel within the Dominion and Principality of Wales and Marches of the ſame is eſtabliſhed and hath the force of a law, for or concerning the determination of cauſes and matters of the ſame, comprehendeth not the Counties of Cheſter, and the City of Cheſter, becauſe the ſame Counties of Cheſter and the City of Cheſter be no part nor parcell of the ſaid Dominion or Principality of Wales, or of the Marches of the ſame. The Preſident & Councel of Wales and the Marches of the ſame. The Counties of Cheſter, and the City of Cheſter no part of the Marches of Wales.

Between Sir John Egerton Plaintiffe, and William Earl of Derby Chamberlain of Cheſter & others Defendants, for the truſt of an intereſt of a tearm in lands in the County of Cheſter, theſe points were reſolved by the Lord Chancelour and by the Chief Juſtice of England, Juſtice Dodderidge, and Juſtice Winche, whom the Lord Chancelour called to be his Aſſiſtants as followeth. Hil. 11 Iac. in the Chancery.

Firſt, that the Chamberlain of Cheſter being ſole Judge in Equity, or his Deputy cannot decree any cauſe wherein he himſelfe is party, for he cannot be Judex in propria cauſa, but in that caſe he may complain in the Chancery of England. Vid. in the Charter of Durham. Anno 30 E. 1. Coram Rege.

Vide 21 H. 3. breve 881. in rationabili parte verſus Comitem Ceſtriæ de hæreditate D. quondam Comit' Ceſtriæ. Comes dicit quod noluit reſpondere de terra in Com' Ceſtriæ ubi brevia domini regis non currunt extra libertates ſuas niſi Cur' conſider', & Conſideratum fuit per curiam quod reſpondeat. 21 H. 3. bre. 881.

2. If the Defendant dwell out of the County Palatine, if any of the County Palatine have cauſe to complain againſt them for matter of Equity for lands or goods within the County Palatine, the Plaintif may complain in the Chancery at England, becauſe he hath no means to bring them to anſwer, and the Court of Equity can bind but the perſon, for otherwiſe the ſubject ſhould have juſt cauſe of ſuit, and ſhould not have remedy: and when particular Courts faile of juſtice, the generall Courts ſhall give remedy, ne Curiæ regis deficerent in juſtitia exhibenda. 18 Aſſ. 382. 13 E. 3. tit. juriſd. 5 E. 3. 30. 38 H. 6. 6. 7 H. 6. 37. 8 E. 4. 8. 11 H. 4. 27. &c.

3. It was reſolved, that the King cannot make any Commiſſion to heare and determine any matter of equity, but matters of equity ought to be determined in the Court of Chancery, whoſe juriſdiction therein have had continuall allowance, and ſo was it reſolved in * Perots caſe. * See this caſe in the Chapter of the Chancery, pa. 87.

4. Upon conſideration had of the ſaid Certificate of the Lord Dier, and the ſaid other Judges, it was reſolved, that for things tranſitory though in truth they were emergent within the County Palatine, yet by the generall rule of law, the Plaintiffe may alledge theſe to be done in any County where he will, and the Defendant cannot plead to the juriſdiction of the Court, that they were done, &c. within the County Palatine: but if the Plaintiffe ſuppoſe the tranſitory cauſe of action to be in the County Palatine, that may be pleaded to the juriſdiction, otherwiſe it is of things locall. See in the Chapt. of the County Palatine of Durham.

An office found by Commiſſion in the nature of a Mandamus iſſuing out of the Chancery at Weſtminſter before the Commiſſioners in Com' Ceſtriæ for lands holden in Capite in the ſame County, was holden void per conſilium curiæ Wardorum, for it ought to be by writ or Commiſſion out of the Exchequer in the County Palatine, which is the Court of Chancery there.

If an erroneous judgement be given before the Chamberlaine in the Exchequer in any matter wherein he proceedeth according to the courſe of the Common law, the writ of Error ſhall be directed Camerario ſeu ejus locum tenenti; but if the judgment be given before the Juſtice of Cheſter, then the writ is directed

Regiſt. fo. 17. a. 34 H. 6. 42. 6 H. 4. 9. Lib. Intr. Raſt. 172. Dier 15 El. 320, 321. Dier 18 El. 345, 346.

Juſticiario Ceſtriæ ſive ejus locum tenenti. And note that in a writ of Error to the * County of Cheſter, day ſhall be given by ſo long time, that three Counties may be holden before the return of the ſame writ in the Kings Bench, which is four months, by which time the Juſtices or Lieutenant within the ſame County may redreſſe the error, if they will, and this by the uſages of the ſame County; But in a writ of Error upon a fine they have no ſuch power: and the Plaintiffe ought to bring the writ of Error to the next County after the Teſte, and it ſhall be read, Coram Judicatoribus ratione tenurarum ſuarum ibidem. Plaintif ſhall aſſign the error without praying proceſſe againſt the Defendant, but onely to pray Judicatores to examine the error, and if they ſhall be found they may adviſe thereon, or preſently reform it, and award reſtitution, or by their diſcretion they may award proceſſe returnable at the next County againſt the tenant or Defendant ad audiend' errores, (which is reaſonable, and neceſſary to be granted) and ſo returne their own judgment given by them or their Predeceſſors, and then there is an end of the buſineſſe, and the Record ſhall remain there without removing; and by this meanes they ſhall ſave an hundred pound forfeiture to the King. But if they affirm the judgment which is erroneous, their affirmation and the Record ought to be removed into the Kings bench, if the party Plaintif be grieved therewith: and if their affirmation be erroneous, although their firſt judgement was given by their Predeceſſors, notwithſtanding they ſhall forfeit the hundred pounds. And the party grieved by their affirmation or reverſall ought to bring a ſpeciall writ of Error peremptory, which ſhall not be examined by them, for that all this is to be underſtood where error in law is aſſigned: for upon the writ of Error firſt brought, if any error in fait be aſſigned, as death of one of the parties, hanging the plea, or the like, which is tryable by the Country, they cannot hold plea thereof, but return the Record, with the writ into the Kings Bench. Neither can they hold plea of a releaſe of errors after the judgment or the like, for they are onely to examine the errors of the Record or proceſſe, and all this doth notably appear in our books. But if no ſuch uſage had been, the Record ought to have been removed by the writ of Error into the Kings Bench, as it ought to be in other caſes.

* Note theſe generall words extend as well to the Chamberlain as to the Juſtice by the rule of the Regiſt. Ubi ſup.

Hil. 29 Eliz.

Egerton the Queens Solicitor moved in the Chancery to have a Certiorari to the County Palatine of Cheſter for the removing of a Record of Aſſiſe taken in that County between Cotton and others Plaintifs, and Venables and others Defendants, wherein the Recognitors of Aſſiſe gave a falſe verdict, and to the intent, that a writ of Attaint might be brought in the Kings Bench, a Certiorari was praied. And it was doubted, whether an Attaint did lye in this caſe, out of the County Palatine. And by the opinion of Wray and Anderſon Chief Juſtices, and Manwood Chief Baron, upon conſideration had of the ſtatute of 23 H. 8. cap. 3. whereby it is enacted in theſe words, That all Attaints hereafter to be taken ſhall be taken before the King in his Bench, or afore the Juſtices of the Common pleas, and in no other Courts; They reſolved and ſo certified the Lord Chancelor that for a falſe verdict given in the County Palatine of Cheſter, the Attaint ought to be brought either in the Kings Bench or Common pleas, and not in the County Palatine of Cheſter, and thereupon a Certiorari was granted for the removing of the Record.

Vid. 3 El. Dier 202. b. Benloes 3 Eliz.

Hil. 29 El. Coram rege, Huddleſtons caſe, in Brevi de errore.

Hil. 29 Eliz. Coram Rege. The caſe was that Queen Elizabeth by her Letters Patents granted the cuſtody of the Caſtle of Cheſter to John Paſton, and Richard Huddleſtone Eſquires, and the ſurvivor of them; John Paſton died, and in a Scire fac' againſt Huddleſtone in the Exchequer before the Chamberlaine, (Glaſier then being Deputy Chamberlain) to repeal the ſaid grant, &c. judgement was given againſt Huddleſton that the Patent ſhould be annulled and cancelled; and hereupon Huddleſton brought his writ of Error. And it was objected that before any writ of Error ought to have been granted, Huddleſton ought to have ſued to the Queen by petition to have a writ of Error according to the book in 23 E. 3. fo. 24. But it was anſwered, that here in this caſe no inheritance was recovered by the judgement, and if Huddleſton that claimed the

23 E. 3. fo. 24. F. N. B. fo.

office

office but for tearm of his life should be driven to his petition, wherein great delay might be used, his life might end before he could obtain his writ of Error, therefore the writ of Error in this case was to be granted without any petition: and of that opinion was the whole Court of the Kings Bench, and so the writ of Error did stand.

Judices & Sectatores Com Cestriæ non consueverunt apponere sigilla sua alicui recordo in præsentia Justiciariorum. Pasch. 9 E.2. Coram rege Rot.32.

Before the statute of 34 H.8. neither the County Palatine of Chester sent Knights to the Parliament, nor Citizens out of the City of Chester. 34 H.8.cap.13.

Before the statute of 27 H.8. the Lord Chancelor of England appointed no Justices of Peace, Justices of Quorum, or Gaol delivery within the County of Chester. 27 H.8.cap.5.

The opinion of C. in the County of York was holden of the Prince, as of the County of Chester, and that all pleas reall and personall rising within the County, or within any parcell of land holden of the County ought to be impleaded within the said County Palatine: For the King by his Letters Patents may ordain a Court at York, or in any other County which shall have jurisdiction through the whole Realm, and so it was resolved. 22 E.4. Jurisd.61. Lib.Int.Rast.fo. Si teneatur immediate or mediate.

The City of Chester was made a County of it self by King H.7. by Letters Patents, dat. 6 Aprilis 21 of his reigne. Lit.Pat.6 Apr. 21 H.7.

See the Statute of 5 El.cap.23. Concerning writs of Significavit and Excom capiend'. See the statute of 18 El.cap.8. making of more Justices then one. 5 El cap.23. 18 El.cap.8.

By the statutes of 8 H.6 cap. 10. It is provided, That upon every Indictment or Appeal by which any person dwelling in any other County then there where such Indictment or Appeal is, or shall be taken of treason, felony, and trespasse, &c. before any Exigent awarded, &c. that after the first writ of Capias, another writ of Capias shall be awarded directed to the Sheriffe of the County whereof he is or was supposed to be conversant in the Indictment, &c. otherwise the outlawry to be void. 8 H.6.cap.10. Vide cap.13.

In an Appeal in the Kings Bench in the County of Dorset where the Appellee was demurant at Chester, processe continued untill he was outlawed without any Capias into Chester, and it was objected that the Capias could not issue into Cheshire, for it is a Franchise into which the Kings writ runneth not. Holden at the Common law for certain things a writ shall issue to the Franchise of Chester, as for treason, and the statute is made by Authority of Parliament, and is generall as well within Franchise as without, and therefore the Act being generall shall be taken generally to extend into Chester, Quod conceditur, but this is a leading case. 19 H.6.1,2.

Vid. Lib. Int Coke, fo. 230,231,232. & 296,297. See an Act of Parliament, Rot.Par. 9 H.4.nu.45. touching adjournment in pleas.

CAP. XXXVIII.

Of the County Palatine of Durham.

10 E.3.41. 12 E.3. Vouchee 115. 17 E.3.36. 5 R.2. Triall 34. 13 H.4. Vouchee 39. 11 H.4.40. 18 H.6.33,34. 19 H.6.12,52. 21 E.4.8. 1 Mar. ſtat.2.ca.2. Rot. Par. 11 H.6. nu.23. See Rot. Parl. Paſch.31 E.1. Rot.5.a notable record for the liberties of the Biſhop of Dureſme.

THis is alſo a County Palatine by preſcription parcell of the Biſhoprick of Durham, which was firſt raiſed, as it is ſaid, ſoon after the time of William the Conqueror.

Yet I find that this County Palatine hath beene queſtioned (but with evill ſucceſſe.) For at the Parliament holden Anno 11 H. 6. Thomas Biſhop of Durham praied a Commiſſion under the Great Seal to certaine there named, who by vertue thereof ſat and inquired at Hartlepole being within his County Palatine of the rights of the County Palatine with all the Dependants. Whereupon Sir William Eure Knight the Kings Atturny made diver objections, that the Biſhop ought to have no County Palatine, neither liberties royall. On the contrary part the Biſhop produceth his proofs, and the matter on both parts ſeriouſly debated. In the end judgement was given in Parliament for the Biſhop, and that the ſaid Inquiſitions returned in the Chancery or elſwhere ſhould be void. See the Record being very long, and yet worthy the reading.

When the Biſhop himſelf, that ought to doe juſtice and right to others, will do injury and wrong within his County Palatine, and that he cannot be a Judge in his owne cauſe: See a notable Record intituled thus. Recordum coram domino rege porrectum per manus Willielmi de Bereford & Rogeri de Heigham Juſticiar' domini regis ad querelas infra libertatem Epiſcopatus Dunelm' audiend & terminand aſſignat' in hæc verba.

Paſch.30 E.1.

Placita apud Dunelm coram Willielmo de Bereford & Rogero de Heigham Juſticiariis domini Regis ad veteres querelas Ricardi Prioris Dunelm & aliorum hominum Epiſcopatus ejuſdem domini regis prius porrectas & non determinatas audiend & terminand aſſignat'.

Northumb. Dunelm.

Ricardus de Hoton Prior Dunelm' queritur de Anthonio epiſcopo Dunelm, &c. The record is long, but therein you ſhall obſerve ſeverall plaints of the Prior &c. gainſt the Biſhop, whereupon iſſues are joyned, and verdict given againſt the Biſhop, and judgements given worthy the reading. By which Record it appeareth that the Biſhop had within the County of Dureſme Regalitatem ſuam.

* This was Anthony Beak, of that ſtate and greatneſſe as never any Biſhop was, Woolſey excepted.

I find alſo another Record in the ſame Kings time viz.

Placita coram domino rege apud Weſtm' de Termino Sancti Michaelis Anno regno Regis E. filii Regis Henrici 33. finiente, 34. Ro.32.

Mich.34 E.1. Coram rege Rot.32.

*Dominus rex mandavit breve ſuum Epiſcopo Dunelm' in hac verba. Edwardus dei gratia rex Angliæ, dominus Hiberniæ, & dux Aquitaniæ venerabili in Chriſto patri A. eadem gratia Epiſcopo Dunelm' Salutem. Cum Odeliva filia Ricardi de Hurcheworth, Matild' de Swineburne, & Ricardus Bouche, & Agnes uxor ejus arraniaverunt quandam Aſiſam mortis anteceſſoris infra libertatem veſtram Epiſcopatus prædict', * coram Lamberto de Trykingham, Guyehardo de Charoun, & Petro de Thoreſby per breve veſtrum verſus Galfridum fil' Johannis le Maſchun de Herterpole de uno meſuagio, ſex toftis & una carucata terræ cum pertin' in Hurcheworth Irian. Ac prædictus Galfridus Johannem le Maſchun de Herterpole intrinſecum verſus prædict' Odelivam, Matildam, Ricardum & Agnet'*

* Juſtices of the Biſhop.

Per breve veſtrum.

inde

inde vocaverit ad warrant'. Et idem Johannes ten' prædict' eidem Galfrido warrantizans Simon' filium Simon' de Mora intrinsecum versus eosdem Odalivam, Matild', Ricardum & Agnet' ulterius inde vocaverit ad warran'. Ac idem Simon' eadem ten' eidem Johanni Warrantizans inde vocaverit ad warran' versus eosdem Odelivam, Matild', Ricardum & Agn' per auxilium cur' nostræ Aymerum de Rocheford & Julianam uxorem ejus, Johannem Swayne, & Aviciam uxorem ejus, & Thom' de Fisbborn juniorem forinsecos, qui terras aut tenementa infra libertatem prædictam aut alibi infra districtionem vestram non habent, per quæ per ballivos vestros libertatis prædict' ad warran' illam faciend' distringi possunt, ut accepimus. Nos attendentes expediens esse & necesse quod nos super recordo & processu Assisæ prædictæ plenius certioremur, ut partibus prædictis, quod justum fuerit in hac parte ulterius fieri faciamus. Vobis mandamus quod inspectis recordo & processu prædict', si vobis constiterit ita esse, tunc recordum & processum Assisæ prædictæ cum omnibus ea tangentibus nobis sub sigillo vestro distincte et aperte mittatis & hoc breve, Ita quod ea habeamus à die Sancti Michaelis in 15 dies ubicunque, &c. partibus eundem diem præfigentes quod sint ibi statur' & receptur' quod curia nostra consideraverit in hac parte, ut nos finito placito warran' prædict' in curia nostra record' et proces' totius negotii memorati vobis remittamus ad procedend' in eodem secundum legem & consuetudinem libertatis prædict'. T. me ipso apud Wynelingfeld 13 die Julii Anno regni nostri 33. Virtute cujus brevis prædictus Episcopus misit recordum et processum in hæc verba. *Placita de Assisis apud Dunelm' coram Guyehardo de Charroun & Petro de Thoresby Justiciar' assignat', associat' sibi L. de Trikingham die Martis proxim' post clausum Pasch. Anno regni regis* E. 33. *& promot' domini* A. *Dunelm' Episcopi* 22.

Forein Voucher.

Si vobis constiterit ita esse.

Assisis venit recognitur' si Ricardus de Hurcheworth pater Odelivæ fil' Ricardi de Hurcheworth & avus Matildæ de Swynesburne, & Agn' uxor' Ricardi Bouche fuit seisitus in dominico suo ut de feodo de uno mesuagio, sex toftis & una carucata terræ cum pertin' in Hurcheworth Brian die quo, &c. Et si, &c. quæ Galfridus fil' Johannis le Maschun de Herterpoole. Et sciendum quod tertia pars prædict' tenement' excipit' eo quod prædict' Odeliva alias comparuit in curia, & modo non sequitur pro parte sua, &c. Et Galfridus alias venit & dixit, quod ipse tenet prædicta tenementa ad terminum vitæ suæ ex dimissione Johannis de Maschun de Herterpoole et in forma prædicta vocavit ipsum Johannnem ad Warran' Simon' fil' & hæredem Simonis de Mora, qui modo venit per Sum' & ei warrantiz'. Et vocat ulterius inde ad warrant' per auxilium cur' hic et cur' domini regis Aymerum de Rocheford & Julianam uxorem ejus, filiam & unam hæredum Nicholai de Swynburne, Johannem Swaine & Aviciam uxorem ejus filiam & alteram hæredem prædicti Nicholai, & Thomam de Fishburne filium Christianæ cohæred' prædict' Julianæ & Aviciæ sum' in Com' Northumbr'. Et quia curia ista jurisdictionem in prædict' Aymero & aliis warrant' &c. qui exec' datus est dies partibus hic die Martis proxim' post festum Sancti Jacobi Apostoli. Et dictum est prædicto Simoni quod sequatur versus Warrant' suos per auxilium cur' domini, prout sibi viderit expedire, &c. Postea ad diem illum ven' tam prædict' Matilda, Ricardus & Agn' quam prædict' Simon, Et iidem Matild' & alii petentes petunt quod procedat ad Assisam capiend' per defaltam

Dunelm. Pater Odelivæ, avus Matildæ.

prædict' Simonis ex quo quod nondum ſecutus fuit verſus warrantos, &c. Et ſuper hoc idem Simon profert breve domini regis hic de mittendo recordum & proceſſum Aſſiſæ prædictæ eidem domino regi à die Sancti Michaelis in quindecim dies ubicunque, &c. quæ quidem recordum et proceſſus, & etiam breve domini regis prædict' quod habuit record' conſui' per prædict' Matild', Ricardum & Agnet' domino regi mittitur juxta tenorem brevis ſui prædict'. Et idem dies præfixus eſt partibus coram eodem domino rege ubicunque, &c. Et prædict' Ricardus & Agn' po: lo: ſuo prædict' Matild' in Placito prædict' &c. Ad quem diem coram ipſo domino rege venerunt partes, & quia conſtat per recordum prædict' quod prædict' vocati ad Warran' ſunt extrinſeci, & quod vocati ſunt ad Warran' per auxilium curiæ domini regis qui eſt ſuperior dominus totius regni, & qui omnibus & ſingulis de regno ſuo juſtitiam facere tenetur, & maxime in defectu aliorum per quorum defectum idem dominus rex vocatur in auxilium; Præceptum eſt Vicecom' Northumb' quod ſummoneat prædict' Aymerum de Rocheford & Julianam uxorem ejus filiam et unam hared' Nicholai de Swineburn, Johannem Swayne et Aviciam uxorem ejus fil' et alteram hared' prædict' Nicholai, & Thom' Fiſhburn fil' Chriſtiana coharedis prædictarum Julianæ & Avitiæ, quod ſint coram rege à die Sancti Hilarii in 15 dies ubicunque, &c. ad warran', &c. Idem dies datus eſt petentibus, et ſimiliter prædict' Simoni tenen' per Warrant' in Banco, &c. Idem Simon po: lo: ſuo Waltero de Middleton & William de Burgham loquela prædict' &c. Et quia prædictus Epiſcopus non miſit breve originale ſimul cum prædict' recordo, & neceſſe eſt prædict' breve hic mittat; Mandatum eſt prædicto Epiſcopo vel ejus locum tenenti, quod prædict' breve domino regi mittant, ita quod illud habeant ad præfatum Terminum, &c. Ad quem diem præd' Simon tenens per warran' venit; et prædict' Matild' de Swynburn, Ricardus Bouche, et Agnes uxor ejus petentes non venerunt, nec, &c. Ideo prædict' Simon inde ſine die. Et prædict' Matilda, Ricardus et Agn. et plegii ſui de proſequend. in miſericordia, &c.

Nota.

Paſch. 46 E. 3. Coram rege Rot 42.

In an Information againſt Thomas Biſhop of Durham for a contempt in not certifying a Record, he pleads that he is Comes Palatinus & dominus regalis cujuſdam terræ vocat' the Biſhoprick of Durham, & habet omnia Jura regalia quæ ad Comitem Palatinum & dominum regalem pertinent, per ſe, Juſtic' & miniſtros ſuos exercenda.

In this County Palatine there is a Court of Chancery which is a mixt Court both of law and equity, as the Chancery at Weſtminſter: Herein it differeth from the reſt, that if an erroneous judgement be given either in the Chancery upon a judgement there according to the Common law, or before the Juſtices of the Biſhop, a Writ of Error ſhall be brought before the Biſhop himſelfe, and if he give an erroneous judgement thereupon, a Writ of Error ſhall be ſued returnable in the Kings Bench.

But now let us ſee what we find in our books concerning this County Palatine.

Mich. 14 E. 3 tit. Error 6. F.N.B. 21. g. 8 El. Dier 250.

In a Formedon in Durham the tenant pleaded the warranty of the Anceſtor of the Demandant, with aſſets in a forain County, whereupon the Court awarded that the tenant ſhould goe quit without day. And the Demandant upon this judgement ſued a Writ of Error before the Biſhop, and aſſigned for Error, that the Juſtices awarded that the tenant ſhould goe quit without day, where they ought to have continued the plea by adjournment until the Record had been removed. And for this error the Biſhop reverſed the judgement, and day given to the parties before his Juſtices where the plea was pleaded. At which

which day the tenant was eſſoined, and a day given over. At that day a writ came to remove the Record in the common Bank, and a day given to the parties in the common Bank, and this proceeding of the Biſhop was according to the uſage there. And after by the advice of the whole Court a Venire fac' iſſued out of the Common Bank to try the iſſue joyned at Durham.

If a man in the County Palatine of Durham vouch a forreiner to warranty, the demandant may counterplead that the vouchee hath eſſoins within the County Palatine for the delay. 32 E.3. Vouch. 97. 14 H.6. fo. 3.

In a Writ of Treſpaſſe Des biens emportes deins un certeine ville, the defendant ſaid, that the place where the plaintife ſuppoſed the taking away, is within the franchiſe of the B. of Durham, where the Kings Writ runneth not, but is a franchiſe Royall. Judgement de briefe. Whereunto the plaintife ſaid, that the defendant came in by diſtreſſe, and ſo the Court ſeiſed of the plea. Finchden giving the rule of the Court ſaid, the Court is not in this caſe ſeiſed of the plea, but that ſhould be where conuſance or franchiſe is challenged, which lieth not in this caſe, but the Biſhop hath franchiſe royall into which the Kings Writ runneth not, and therefore for not denying of the exception the Writ abated. Note the Towne wherein the tranſitory treſpaſſe was alledged by the plaintife was within the County Palatine. 13 E.3. Voucher 165. 45 E.3. 17. Vid. 19 E.3. triall 66. 19 E.3. jurisd. 29. 33 E.3. ib. 57. 45 E.3. Viſne 58.

If the tenant vouch two, one within the County Palatine of Durham, and the other at the Common law, ſummons ſhall be awarded to the Lord of the County Palatine, commanding him to ſummon the vouchee to be at a certain day before the Juſtices here to try the warranty: in this caſe if the tenant recover in value, the Juſtices ſhall write to the Lord of the County Palatine to render in value, quod fuit conteſſum. 19 H.6. 52.

See Dier 12 El. where he that hath jura regalia ſhall have forfeiture of High Treaſon, whereof Vide before in the Chap. of the County Palatine of Lanc. Dier 12 El. 288. which was the caſe of James Pilkington Biſhop of Durham.

* If the one be vouched, and the tenant prayeth that he may be ſummoned in the County of York, and the County Palatine of Durham, the voucher ſhall ſtand, for if he be ſummoned in the County of York, it ſufficeth. * 13 H.4. Vouch.

[a] Dominus Rex habebit cuſtodiam omnium terrarum eorum qui de ipſo tenent in capite per ſervicium militare, de quibus ipſi tenentes fuer ſeiſiti in dominico ſuo ut de feodo die quo obierunt de quocunque tenuerunt per hujuſmodi ſervicium, &c. exceptis feodis Epiſcopi Dunelm' inter Tine & Teſe. 39. 36 H.6. ib. 49. [a] Prærogativa reg. cap. 1.

1 This exception extendeth not to the body. 2 If the Biſhop did after this ſtatute purchaſe any Seigniory between Tine and Teſe, it extendeth not to that. 3. That before this ſtatute, the King ought to have had the wardſhip of the lands, as appeareth in our books, contrary to Poles opinion in this caſe. 16 E.3. tit. Livery 29. Glanv. l. 7. c. 20. Bract. l. 2. fo. 85.

* The third Chapter of the ſaid ſtatute of prærogativa regis doth give the King primer ſeiſon, &c. without any ſaving of the Biſhop of Dureſme. 9 H.3. prær. 25. 21 H.3. ib. 26. * Prær. regis ca. 3.

Sir Thomas Gray Knight was ſeiſed in fee of the Mano^r of Chillingham in the County of Northumberland holden of the Queen by Knights ſervice in Capite, and of the Mano^r of Roſſe in the County Palatine of Durham holden of the Biſhop of Durham by Knights ſervice in Capite, and died ſeiſed of both, his ſonne and heire of full age. And although on the behalfe of the Biſhop ſome preſidents were ſhewed in like caſe, yet the two Chief Juſtices Popham and Anderſon prima facie did hold, that the primer ſeiſon of and for the Mano^r of Roſſe belonged to the King. Trin. 38 El. in Curia Wardorū.

The Town of Creke in the County of York holden of the Biſhop of Durham, &c. ſhall be impleaded within the County Palatine of Durham, and in no other place: and ſo is the Mano^r of Howden in the County of York. 22 E.4. jurisd. pl. 61.

The King ſhall have the temporalities of the Biſhop of Durham, and for a Church that becommeth void the King ſhall have a Quare Impedit. 5 R.2. triall. 94.

See the ſtatute of 5 El. ca. 23. concerning the writs of Significavit and Excom capiendo. 5 El. cap. 23.

It was holden by all the Juſtices, that if a man be ſurety for another to keepe the peace, and after he breaketh the peace, and the ſurety hath lands in the County 21 E.3. 49. 1 E.4. 10. Regiſt. 153. F.N.B. 132.

County Palatine of Durham, the King ſhall command the Biſhop of Durham or his Chancelour to doe execution. And ſo it is in the other Counties Palatines. In the ſame manner it is of a Statute Staple, &c. Recognizances, &c.

Vide 5 E. 3. fol. 58. 17 E. 3. fol. 56. Rot. Parl. 7 E. 6. Rot. Pat. 7 E. 6. part. 8. 1 Mar. cap. 3.

CAP. XXXIX.

Of the Royall Franchiſe of Ely.

33 H. 8. cap. 10. 5 El. cap. 23.

IN divers ſtatutes it is named the County Palatine of Ely. King H. 1. in the 10 year of his reign, of the rich Monaſtery of Ely made a Cathedrall Church, and of the Abby made a Biſhoprick, and for his Dioceſe aſſigned unto him the County of Cambridge, which before was within the Dioceſe of Linc': In recompence whereof Robert Bluet Biſhop of Lincoln, then Chancelor of England had of him and his Succeſſors three Mannors, parcell of the poſſeſſions of the Abby, viz. Spaldwiche, Bickleſworth, and Eugden. And for the Chapter of this new Biſhop, he inſtituted that there ſhould be a Prior and Covent. But in reſpect of the Revenues, for that their principall Manors were granted away, the number of Monkes being 70. were brought down to 40. And King H. 1. granted to this new Biſhop and his Succeſſors Jura Regalia within the Iſle of Ely. But the ſaid Prior and Covent were in the reign of H. 8. ſuppreſſed, and in ſtead thereof a Dean and Prebendaries were raiſed to be the Chapter of the Biſhop, and a Grammar School for a Maſter and 24 Scholars.

This royall juriſdiction the Biſhop hath by preſcription grounded upon the ſaid grant as well in Pleas of the Crown, as in Common Pleas before his Juſtices.

Trin. 3 E. 1. Rot. 62. Coram Rogero de Seryton & ſociis ſuis Juſticiariis de Banc. Trin. 16 E. 1. in Communi Banco Rot. 89. Cant.

The liberty of the Biſhop of Ely hath been anciently allowed by the Court of Common pleas for lands in Wisbich, within the Iſle whereof a Præcipe quod reddat was brought.

Again, Allocatur libertas Epiſcopo Elienſi pro terris infra Inſulam de Ely prout alias, ſcilicet in rotulo Martini de Littlebury & ſociis ſuis annis 55 & 56 H. 3. Anno 14 Regis nunc coram Thoma de Wayland & ſociis ſuis. Item Mich. 16 Regis nunc, Rot. 27.

3 H. 6. triall 2.

In treſpaſſe the Defendant pleaded an arbitrament made at A. in the Iſle of Ely, and thereupon iſſue was joyned, the Plaintiffe ſhewed that Ely is a Franchiſe Royall, and they of the Iſle ſhall not be empanneled out, and prayed a Venire fac' to the Sheriffe of Cambridge.

Lib. int. Raſt. fo.

Iſſue being joyned and the Iſſue to come out of Ely, the Entry is, Super quo prædict' (querens) dicit quod E. prædict' eſt infra Inſulam Eliens' quodque Epiſcopus Eliens' talem habet libertatem in Inſula prædicta, quod nullus Juſticiar' nec aliquis miniſter domini regis Inſulam illam ingredi debet ad aliquod officium ibi exercend', nec liberi tenentes nec reſidentes in eadem Inſula illam ingredi debent ad aliquam Juratam extra Inſulam illam faciend', & petit breve domini regis de Venire fac' hic 12. de vicineto de Soham, quæ eſt propinquior Villa in prædict' Com' Cantabr' extra Inſulam prædict' adjacen' prædict' Villæ de Ely ad triandum exitum præd'. Et quia videtur Juſticiariis hic quod petitio illa eſt rationi conſonans, Ideo præcept' eſt Vic' Cant' quod Venire fac' hic tali die 12. de vicineto illo, per quos, &c.

46 E. 38.

Sentence was given in the Eccleſiaſticall Court in Cambridge, and the Defendant was ſummoned at Hadington in the Iſle and Franchiſe of Ely, as

as he might be, for where the action is intire, and not severall, whereof part is within the Franchise and part without, the Franchise shall not be allowed. As if one take a man in a place at the Common law, and carry him into a Franchise and there imprison him, this Court shall hold plea, quia magis dignum trahit ad se minus dignum. Et sic de similibus. 5 E.2. consuans 68.21 E.4.35.

In an Action of Account against one as Baylif of lands in H. and A. and H. is within the Franchise of the Isle of Ely, and because the Plaintif might have charged the Defendant as Bailif of A. and it is no reason that by joyning of them in one Writ to disherit the Bishop of his Franchise, the Writ abated. 24 E.3. consuans 74. 20 E.3. ibid. 8 c. 49 E.24. See 23 E.3.22. accord.

CAP. XL.

Of the County Palatine of Pembroke.

This was an ancient County Palatine within Wales, and the Earle was Comes Palatinus, and had Jura regalia, and all things belonging to a County Palatine, but the jurisdiction hereof was taken away by the statute of 27 H.8. cap. 26. the County Palatine then being in the Kings hands. Rot. Parliament. Hil. 18 E.1. fo. 6. *Totus Com' Pembroke fuit Com' Palatinus, & habuit Cancel. & Sigillum, &c.* 27 H.8. cap. 26.

And for further proof that it was a County Palatine, see the Charter of E. 3. to Lawrence de Hastings in these words. Carta Regis E.3. An. 13. regni sui. 13 Octob. Ro. Pat. 13 E.3. m. 12.

Rex omnibus ad quos, &c. Salutem. Sciatis quod circumspectionis & elegantiæ præsagium quod ex aptis consanguinei nostri charissimi Laurentii de Hastings juventutis auspiciis concepimus, merito nos inducunt, ut ipsum in his quæ honoris sui debitam conservationem respiciunt, pronis favoribus prosequamur. Cum itaque hæreditas bonæ memoriæ Audomari de Valentia Comitis Pembrochiæ (ut dicitur) jampridem sine hærede de corpore suo procreato decedentis ad sorores suas fuerit devoluta, inter ipsas & earum hæredes proportionabiliter dividenda: Quia constat nobis quod præfatus Laurentius qui dict' Audomar' in partem hæreditatis succedit est ex ipsius Audomari sorore seniori descendens, & sic peritorum assertione, quos super hoc consuluimus, sibi debeatur prærogativa nominis & honoris; justum & debitum reputamus ut idem Laurentius ex seniori sorore causam habens, assumat & habeat nomen Comitis Pembrochiæ, quod dictus Audomarus habuit dum vivebat: quod quidem (quantum in nobis est) sibi confirmamus, ratificamus, & etiam approbamus; Volentes, & concedentes ut dictus Laurentius prærogativam & honorem Comitis Palatini in terris quas tenet de hæreditate dicti Audomari, adeo pleno, & eodem modo habeat & teneat, sicut idem Audomarus illas habuit & tenuit tempore quo decessit. In cujus, &c. Teste rege apud montem Martini die Octob. Anno regni 13.

Note here, that the eldest sister ought to have the honor, upon consultation with learned men.

Prærogativa & honor Comitis Palatini.

Sicut Audomarus illas habuit.

CAP. XLI.

Of the Franchiſe of Hexam and Hexamſhire.

This was ſometime parcell of the poſſeſſions of the Archbiſhop of York, and claimed by him to be a County Palatine.

2 H. 5. cap. 5. 9 H. 5. cap. 7. 8 E. 4. cap. 2. 33 H. 8. cap. 10. 14 El. ca. 13.

At the Parliament holden in 2 H. 5. it is reſolved that Hexamſhire was a Franchiſe where the Kings writ went not.

And in the ſtatute of 33 H. 8. it is named a County Palatine.

But at the Parliament holden in Anno 14 Eliz. it was ſeriouſly examined, and in the end Four concluſions were enacted by Authority of Parliament. 1. That whiles it was in the hands of the Archbiſhop it was tearmed and named a County Palatine, where in right or proof there was none ſuch. 2. That it is within, and parcell of the County of Northumberland. 3. That all Pleas of the Crown, and ſuits between party and party ſhall receive like triall, as the reſt of the Subjects of Northumberland ought to have. 4. That the Sheriff and other Officers of the County of Northumberland may execute his or their office, &c. within Hexam and Hexamſhire. So as whatſoever it was before 14 Eliz. it is now no County Palatine, nor Franchiſe royall.

CAP. XLII.

Of the Courts of the Cinque Ports.

Domeſday. Chent. Lib. Int. Raſt. fo.

At the firſt the privileged Ports were but three. For at the making of the book of Domeſday, which was in the 14 year of the Conqueror, there are but three named in that book, viz. Dover, Sandwich, and Romney, and that theſe three in the time of Edward the Confeſſor were eronerated of ſuch charges and burthens, as others did bear; After two Ports were added to them by the Conqueror, viz. Haſtings and Hithe.

Bract. li. 3. f. 118.

Bracton who wrote in the reign of H. 3. nameth Haſtings, Romnall, Hethe, * Dover and Sandwich to be the Five Ports. Of this number of Five were theſe Ports called the Cinque Ports, as it appeareth by a writ which Bracton rehearſeth in the ſame place, viz.

* Memorandum quod Pharanus de Bolonia venit ad Conqueſtum tempore Willielmi Regis, Baſtardi, & in illo Conqueſtu perquiſivit Wardam de Doveria in feodo, & habuit, & tenuit toto tempore prædict' Regis Willielmi uſque ad tempus Regis Henrici, avi Regis Henrici filii Regis Johannis, & dictus Rex Hen. avus dedit dicto Pharano 60. libratas terræ in eſchambio pro Doveria, viz. Manerium de Wendovre pro xl. libr. terræ, Kingſhull pro x libr. terræ, & 7 hidas in Eton pro 10 li. terræ. In lib. de Abbathia Miſſ. fo. 114.

Rex Vic' Norff. & Suff. Salutem. Sciatis quod ſummoniri fecimus ad talem diem apud Shepwey omnia placita de Quinque Portubus ſicut teneri debent, & ſolent coram Juſticiariis apud Shepwey. Et ideo tibi præcipimus quod hoc ſciri facias hominibus de Jernemewe, & balivis de Donewiz, ita quod ſi aliquis conqueri voluerit de aliquo qui ſit de libertate vel infra libertatem Quinque Portuum, tunc ſit apud Shepwey coram præfatis Juſticiariis noſtris querelam ſuam propoſiturus, & juſtitiam inde recepturus. Teſte, &c.

In Dorſ. Cart. Anno 1 Re. Jo. parte 2. m. 12.

After two more, viz. Winchelſey and Rye were added: for I finde a Record Anno 1 Regis Johannis, quod Winchelſey & Rye debent eſſe in auxilium Villæ de Haſtings ad faciend' regis ſervicium 20 Navium, &c.

And theſe have the ſame Franchiſes and Liberties that the former had; and every one of theſe ſend two Burgeſſes by the name of Barons of the Cinque Ports

Ports to the Parliament, as by the Records of the return of them remaining in Chancery at every Parliament doth appeare. And albeit two be added, yet they hold their former name of the Cinque Ports. These Ports or Havens doe lye towards France, and therefore prudent antiquity provided, that they should be vigilantly and securely kept, for performance whereof these Ports have a speciall Governor or Keeper, called by his office Lord Warden or Keeper of the Cinque Ports, and is also Admirall, and hath the jurisdiction of the Admiralty amongst them, and is exempt from the Admiralty of England. This Warden in former times was ever a man of great fidelity, wisdome, courage, and experience, for that he had the charge of the principall gates of the Realm. He is also Constable of the Castle of Dover, his jurisdiction as Constable is limited by the statute of Artic. super Cartas, Anno 28 E. 1. which you may read, and the Exposition thereof in the Second part of the Institutes. 50 E.3.5. Artic. super Cart. cap. 1. 2. part of the Institutes.

The Franchise of the Cinque Ports hath been time out of mind partly by ancient Parliaments, partly by ancient Charters, &c. and confirmed by expresse name by the statute of Magna Carta ca. 9. and were made Five by William the Conqueror. 2 E.4.17.17 E.4. 16,17. 36 H.6. 34. Fortesc. Lib. Int. Rast. fo.

For the better understanding of our books; it is to be known that there is a great diversity between the principality of Wales, the Counties Palatines, &c. and the Cinque ports. For Wales was originally no part of England, but County Palatines were parcell of the Realm of England and divided in jurisdiction, and the Cinque ports are parcell of the County of Kent, and yet ubi breve domini regis non currit, but have not Jura Regalia, and therefore regularly no writ of Error did lie of a judgement in Wales, otherwise it is in the Counties Palatines. A judgement here of lands in Wales or in the County Palatine is void, but a judgement given here of lands in the Cinque ports is good if the privilege be not pleaded, for they be part of the County, and the Franchise may be demanded in another action. 9 H.7.12. 36 H.6.33,34.

And it is to be observed that within the Cinque Ports there be divers Courts, one before the Constable of the Castle of Dover, (whereof somewhat hath been said before) there be other Courts within the Ports themselves, before the Maiors and the Jurators, and another which is called Curia Quinque Portuum apud Shepwey, whereof we shall speake hereafter.

If any of the Kings Courts doe write to have a record in the Cinque ports, or for doing of any thing within the same, the writ shall be directed Constabulario Castri de Dover, & Gardiano Quinque Portuum, for he is the immediate Officer to the Kings Courts for execution of the Kings writs within the Cinque Ports. For example: 33 E 3 jurisd. 60.

If a man plead a Record within the Cinque Ports, and the other plead Nul tiel record, there shall goe a writ to the Constable of Dover to certifie the Record, for the course is for the Kings Courts to write to the Constable, and he shall send to the Barons, that is to the Maior and Jurats, to certifie him of the Record which is before them, and he shall certifie the Kings Court, and so the Constable is the immediate Officer to the Kings Court. 30 H.6.6.& 7.

Note, though Books say that the Writs shall be directed to the Constable of Dover, yet the writ is to be directed Constabulario Castri de Dover, & Gardiano Quinque Portuum. Regist. fo. F.N.B. 80. b. 240. a.

A man hath a judgement in any of the Kings Courts, and the Defendant hath no land or goods but in the Cinque ports, the Plaintif shall have a Writ to the Constable of Dover to make execution. And so it is if a man will have surety of the peace against any person within the Cinque Ports, then he shall have a Writ out of the Chancery directed to the Constable of Dover, for the doing thereof. Regist. fo. F.N.B. 80. b. 132. 21 E.3.49 See 1 E.4.10.

* Et quia in quadã Carta domini regis nunc continetur, quod omnes querelæ versus ipsos Barones Quinque Portuũ apud Shepwey terminari debent corã Custode Quinque Portuum, Præcept̃ est Stephano de Peneceſtr̃ nunc Custodi quod partibus prædictis coram eo certum diem assignet & fac' Justiciæ complementum. Regist. 153. * Rot. Parl. Anno 18 E. 1. fo. 6. nu. 115. Inter Abbatem de Feversh̃ & Baron' de Port de Feversham.

[a] If an erroneous judgement be given in the Cinque ports before any of the Maiors or Jurats, it shall be redressed before the Constable of Dover at the Court at Shepwey, which Court was raised of ancient time by Letters Patents of E. 1.

[a] 30 H.6.6.& 7. Dier 23 El. 376. Brook. *Cinque Ports.* 25. Temps H.8. diversitydes Courts.

[b] The Court of the Cinque ports holden at Shepwey adjudged the Abbot of Feversham (which Abby was within the Cinque Ports) for his offence to be imprisoned, for the which the Archbishop of Canterbury caused the Kings Ministers of Dover to be cited into the Ecclesiasticall Court, &c. The Record saith, Quia secundum consuetudinem regni approbatam, & ratione juris regii, ministri regis pro aliquibus quæ fecerunt ratione officii sui, trahi non debeant. Rex prohibuit Archiepiscopo Cant̃ ne molestari faciat ministros suos Dovor̃, de eo quod Abbatem de Feversham pro delicto suo incarceraſſent per considerationem [c] Curiæ Quinque Portuum de Shepwey, &c. The whole Record is worthy to be read over; this shall suffice for the end that I aim at.

[b] Hil. 18 E. 1. f. 6. Rot. Par. nu. 115. Dors. Claus. Anno 30. E. 1. m. 13.

Vide Fleta lib. 2. cap. 48. the Hustings apud Shepweye.

[c] *Curia Quinque Portuum de Shepwey.* Nota, this for the stile of the Court. See Bract. lib. 3. Ubi supra.

[d] The jurisdiction of the Cinque ports is generall, and extends as wel to personall actions, as to actions reall and mixt, or which touch the freehold, but so it is not in ancient demesne, for regularly that jurisdiction extends not to personall actions.

[d] 50 E. 3. 5. 33 E. 3. tit. jurisd. 60.

If a Precipe be brought of land, part within the Cinque ports, and part without, the whole writ shall abate: & sic de similibus. * And there is a diversity between a Franchise to demand conusans, and a Franchise, ubi breve domini regis non currit: For in the first case the Tenant or Defendant shall not plead it, but the Lord of the Franchise must demand conusans, but in the other case, the Defendant may plead it to the writ.

1 E. 3. fo. 2. 49 E. 3. 24. 11 R. 2 bre 636. 46 E. 3. 8. 33 H. 6. 4. 8 H. 3. 7.

[e] The Manor of P. within the Cinque ports was holden of the King as of the honor of Egle, and escheated to the King for want of heir, the King granteth the Manor of P. to another. And it is adjudged, that the seisin of the King in this case doth not make it of another nature then it was afore; for the priviledge runneth with the land.

[e] 39 E. 3. 17. 30 Ass. pa. 1. 8 E. 3. 22. 49 E. 3. 24.

CAP.

CAP. XLIII.

The Court of the Eſcheator, and of Commiſſioners for finding of Offices, &c.

The gift of the Office of Eſcheator belongeth to the Office of the Lord Treaſurer, who granteth the ſame by his Deed. He is to continue in his Office but one year, or once in three years. 14 E.3.cap.8. 1 H.8.cap.8. 3 H.8.cap.2.

For the derivation of his name, his antiquity, and ſome part of this office, ſee the firſt part of the Inſtitutes, Sect. 4. where the ancient Authors, and many Authorities be quoted: He ought to be ſeiſed of 40. Marks land, except Eſcheators in Cities and Counties Palatine.

All Writs Originall of Diem clauſit extremum, Mandamus, Devenerunt, Melius inquirend', Quæ plura, &c. are directed to him to finde an Office for the King after the death of his Tenant, which held by Knights ſervice in Capite, or otherwiſe by Knights Service.

This Officer in caſe of Eſcheats for Treaſon, Felony, or in caſe of Wardſhip, or Primer ſeaſon, may find an Office virtute Officii. But in caſe of Wardſhip, or Primer ſeiſon, if he finde an Office virtute Officii, if the Land, &c. be of the yearly value of 5. li. (or above) he ſhall loſe every time he ſhall ſit 5. pounds. 3 H.8.cap.2.

Offices found before him virtute Officii, he may returne either into the Court of Chancery, or into the Exchequer, ſaving at this day for Wardſhips, or Primer ſeiſon, which he muſt return into the Chancery: for by the Statute of 32 H. 8. Cap. 46. the Court of Exchequer is barred to deale with the ſame. And Offices found before him virtute Brevis, are to be returned by him into the Chancery. Lib.1.fo.42.b. Alton woods. 4 E.4.24. Scanſ.prer.70.b.

If he ſit by force of a Writ, he ought to take the Inqueſt within a moneth next after the delivery of the Writ, and he ought to returne the ſame within a moneth after he taketh it, either by Writ, or virtute Officii. 3 H.8.cap.2. 8 H.6.16. 18 H.6.7.

See Capit' Eſchaetriæ, whereof the Eſcheator may inquire: and the Statute De Eſchaetoribus, Anno 29 E. 1. Vide Dier. 248. 249. [a] He is accountable pro catallis felonum, fugitivorum, & hujuſmodi. [b] All Offices found before him, or Commiſſioners ought to be found by the oathes of twelve men, every Juror to have Lands, &c. to the yearly value of 40 s. in the ſame County, [c] and indented, and one part by them ſealed, and by him the other part, which is to remaine with the Foreman of the Jury, and to be taken in good Townes, and open places. For ſecret Offices are abhorred in Law, full of vexation and charge, and never have good ſucceſſe. Mag. Cart. 1. part. fo. 160. 161. [a] Keylw. 6 H.8. 173. [b] 1 H.8.cap.8. 3 H.8.cap.2. [c] 34 E.3.cap.13. 36 E 3.cap. 13. otherwiſe void.

Neither he nor the Commiſſioners can take any Enqueſt of inquiry of any other perſons, but ſuch as be impanelled and returned by the Sheriffe. 8 H.6.cap.16. 18 H.6.cap.7.

If he or the Commiſſioners ſhall deny any perſon to give evidence openly in his preſence to ſuch Enqueſts as ſhall be taken before him for the finding of an Office, he ſhall forfeit 40. li. If he, or the Commiſſioners, or any of them ſhall refuſe to take a verdict of the Enqueſt offering to preſent the ſame, he ſhall loſe 100. li. to the party grieved. 1 H.8.cap.8. 3 H.8.cap.2.

An Office found before Commiſſioners is as forcible in Law, as if it had been found before the Eſcheator. 24 E.3.55.

The Eſcheator ought to take no fee by the Statute of W. 1. but of the King onely, but if he finde an Office by force of any Writ, and according to the ſame for the King, hee ſhall have a fee of 40. s. by the Statute of 23 H. 6. but if it be found See the 2. part of the Inſtitutes, W.2.cap.26. 23 H.6.cap.17. 1 H.8.cap.8.

found before him by Writ, or ex Officio, that the Lands are holden of a Subject, or if he finde an Office for the King virtute Officii, there is no fee due to him. But the Commiſſioners ought to take no fee at all, though an Office be found for the King, becauſe they are not within the Statute.

[a] The Eſcheator finding an Office for the King by force of any Writ, not exceeding the value of 5. li. ſhall not take above 15. s. and the Commiſſioners can take nothing: [b] but the Maſter of the Wards may allow Commiſſioners, Counſellours, and Feodaries their Coſts. [c] The Eſcheator may make Deputies, but ſuch able men, for whom he will anſwer, and that have ſufficient Lands in the ſame County, &c. and the Eſcheator ſhall certifie the name or names of his Deputy or Deputies, under his Letters Patents into the Exchequer within twenty dayes after deputation made. And no Deputy ſhall take upon him to occupy that Office, except the Eſcheator hath Lands to the value of 20. li. [d] And if any Sub-eſcheator be made, not having ſufficient, he may be removed by the Kings Writ directed to the Eſcheator De Subeſchaetore amovendo.

[e] If the Eſcheator, Sub-eſcheator, or Commiſſioner, returne a falſe Office, an Action upon the Caſe doth lye againſt them by the party grieved, although they be Offices of Record, beſides the penalty of 100. li. by the Statutes of 1 H. 8. and 3 H. 8. [f] The oath of the Eſcheator expreſſing his duty, appeareth in the Regiſter, fo. 301. b.

[g] If I be poſſeſſed of the goods of a man outlawed in treſpaſſe, and I deliver them to the Eſcheator, I am diſcharged, quod Brian affirmavit: for he ſaid that the Eſcheator is the Kings Miniſter, and chargeable for the goods.

[a] 33 H. 8. cap. 22.
[b] 32 H. 8. cap. 46.
[c] 5 E. cap. 9.
12 E. 4. cap. 9.
F. N. B. 100. a.
9 H. 6. fo. 60.
[d] 5 E. 3. cap. 4.
Regiſter 177.
[e] 21 E. 4. 23.
F. N. B. 100. c.
1 H. 8. cap. 8.
3 H. 8. cap. 2.
9 H. 6. fo. 60.
[f] Regiſt. fo. 301. b.
[g] 10 H. 7. 7. b.

CAP.

CAP. XLIV.

Courts in the Universities of *Cambridge* and *Oxford*.

IT is true that each of these Universities hath divers Courts, Jurisdictions, and Powers, by the Charters of the Kings of this Realme, divers of which were not grantable by Charter, but by authority of Parliament, which being espyed, Queen Elizabeth, (who could (we speake it of knowledge) not onely speak the Languages of French, Italian, and Spanish, but was learned in the Latine and Greek learned tongues, and excelled all others of her Sex in knowledge both Divine and Humane,) for the great love and favour that her Majestie bare to her Highnesse Universities, and for the great zeale and care that the Lords and Commons in Parliament had for the maintenance of good and godly literature, and the vertuous education of youth within either of the said Universities; and to the intent that the ancient Privileges, Liberties and Franchises of either of the said Universities, granted, ratified and confirmed by the Queenes Highnesse, and her most noble Progenitors, might be had in great estimation, and be of greater force and strength, for the better increase of learning, and the further suppressing of vice: It was enacted by Authority of Parliament holden in the 13. yeare of her most prosperous reigne: 1. That each of the Universities should be incorporated by a certaine name (albeit they were ancient Corporations before.) 2. That all Letters Patents of the Queens Highnesse, or by any of her progenitors or predecessors, made to either of the said corporated bodies severally, or to any of their predecessors of either of the said Universities, by whatsoever name or names, the Chancelor, Masters, and Scholars of either of the said Universities, in any of the said Letters Patents had been named, should be good and effectuall, and available in Law, to all intents, constructions and purposes, &c. as amply, fully, and largely, * as if the said Letters Patents were recited verbatim in that Act of Parliament, any thing to the contrary notwithstanding. 3. That the Chancelor, Masters and Scholars of either of the said Universities, and their successors for ever, should severally have, hold, possesse, and enjoy, and use to them and their successors for ever, all manner of Manors, &c. and Hereditaments, and all manner of Liberties, Franchises, Immunities, Nuisances, and Privileges, view of Frankpledge, Law dayes, and other things whatsoever they be, which either of the said corporated Bodies had held, occupied or enjoyed, or of right ought to have had, used, occupied, and enjoyed, according to the true intent and meaning of the said Letters Patents whatsoever, any Statute, Law, Usage, Custome, or other thing or things made or done to the contrary notwithstanding. 4. That all Letters Patents of the Queens Highnesse, or any of her progenitors or predecessors, and all manner of Liberties, Franchises, Immunities, Nuisances, and Privileges, Leets, Law dayes, * and all other things whatsoever therein expressed, given or granted to either of the said Universities, by what name so ever, be and by vertue of this Act should be established and confirmed, any Statute, Law, Usage, Custome, Construction, or other thing to the contrary notwithstanding.

Liberall Arts and Sciences are *Lamina Reipublicæ.*

* Note these generall brief and effectuall words.

* Nota hoc

Note these generall binding and effectuall words. Actus benedictus.

By this recited Act of Parliament, all the Courts, Franchises, Liberties, Privileges, Immunities, &c. mentioned in any Letters Patents, &c. to either of the said Universities (which were too long here to be recited) * that they might prosper in their study with quietnesse, are established, made good and effectuall in Law, against any Quo warranto, Scire facias, or other suits, or any quarell, concealment or other opposition whatsoever. See the Letters Patents of King H.8. bearing date primo Aprilis Anno 41. of his reigne, made to the University

* Haud facile emergunt quorum virtutibus obstat Res vexata domi.

of

of Oxford; and other Letters Patents bearing date 26 Aprilis, Anno 3. Reginæ Eliz. made to the University of Cambridge, both which are by expresse name established and confirmed by the said Act of 13 Eliz. In which Act there is a Saving to all, other then to the Queenes Majesty, her heires and successors. Et sic omnia in tuto.

Touching the Jurisdiction and Consulans of divers things belonging to the University of Cambridge, see the Parliament Roll of 5 R. 2. nu. 45, &c. till nu. 66.

Nota (*prob dolor*) the ancient Charters, Records, &c. of the University of Cambridge burnt by Rebels.

The Maior, Bailifes, and Comminalty of Cambridge were accused, for that they in the late tumults and uprores confedered with divers other misdoers, brake up the Treasury of the University of Cambridge, and thereout took, and burned sundry the Charters, &c. of the said University, and also compelled the Chancelor and Scholars of the said University, under their Common Seals to release to the said Maior and Burgesses, all manner of Liberties, and also all Actions reall and personall, and further to be bound to them in great summes of money: whereupon it was agreed in forme following: That one Writ should be directed to the Maior, Bailifes, and Comminalty of Cambridge, that then were to appeare in the Parliament, and to answer (the forme thereof doth there appeare.) And that another Writ in forme aforesaid should be directed to the Maior and Bailifes that were at the time of the offence, (the forme whereof doth there appeare also.) The Maior and Bailifes that then were appeared in proper person, and pleaded not guilty, ne witting thereto; the Comminalty by their Attorneyes appeared at the day. The Maior and Bailifes, that before were at the time of the offence, appeared also in proper person, and the said Maior answered, That he was not privy to any such act, but only by compulsion of others, if any thing were therein done; the which the Kings learned Counsell then did disprove, as by the Record appeareth. The Burgesses of Cambridge delivered into the Parliament the said two Deeds sealed by the Chancelor and Scholars, the one Deed contained a release of all Liberties and Privileges, with a Bond of 3000 li. to release all suits against the said Burgesses. The other was a Release of all Actions reall and personall as there doth appeare. Upon the reading of which two deeds, they both were commanded to be cancelled for the causes aforesaid. After this the Chancelor and Scholars aforesaid by way of petition, and in forme of sundry Articles exhibited, shewed the beginning & whole discourse of the said Maior and Bailifs effectually and largely. Upon reading of which bill, it was demanded of the said Burgesses what they could say, wherefore their liberties late by the King confirmed should not be seised into the Kings hands as forfeited.

They require 3. things, viz. 1. A copy of the bill. 2. Councell, and 3. respight to answer. To the copy of the bill was answered, that sithence they heard the same, it should suffice, for by law they ought to have no copy. To Councell, it was said, that wherein Councell was to be had, they should have, wherefore they then were appointed to answer to no crime or offence, but only touching their liberties. After many dilatory shifts and subterfuges, the said Burgesses touching their liberties only, having no colour of defence, submitted themselves to the Kings mercy & grace, saving their answers to all other matters. The King thereupon by common consent of the Parliament, and by Authority of the same, seised the same liberties into his hands as forfeited. And after the King granted to the Chancelor and Scholars aforesaid, within the said town of Cambridge and * Suburbs of the same the Assise, conusance, and correction of Bread, Ale, Weights, Measures, Regrators, and Forestallers, with the fines, and amerciaments of the same, yeelding therefore yearly at the Exchequer 10 l. And certain liberties the King after granted to the said Maior and Bailifes, and increased their former fee farm.

Nota, by Act of Parliament. Vid. Rot. Parl. 8 R. 2. nu. 11.

Nota, Suburbs proveth a City.

Nota, the priority of the grant to the University.

This University of Cambridge hath power to print within the same omnes & omnimodos libros, which the University of Oxford hath not. See a notable record in Parliament, 13 H. 4. concerning the University of Oxford, by the which it was decreed & adjudged by Authority of Parliament, that the Popes Bul should not impeach, or alter the right and custome of any thing concerning that University, and therefore was disallowed, too long to be here inserted.

Rot. Par. 13 H. 4. nu. 15, 16, 17.

CAP.

CAP. XLV.

The Courts of the Stanneries in Cornwall and Devon.

The ſtile of the Court of Stannery is, and alwayes hath been, Magna Curia Domini Regis Ducatus ſui Cornubiæ apud Crokerenton in Com' Devoñ coram A. B. Cuſtode Stannariæ dicti Domini Regis in dicto Com̃ Devon. ¶ *The Stile of the Court.*

The Officers of this Court be the Steward, Under-warden, &c. ¶ *The Officers.*

It is called Stannaria à Stanno, becauſe the Lord Warden hath juriſdiction of all the Tynne in Cornwall and Devon. Tynne is a Saxon word, and derived à tinnito, and the Tynners are called Stannatores.

The juriſdiction of this Court is guided by ſpeciall lawes, by Cuſtomes, and by preſcription time out of minde, which ſo far as we finde it to be allowed by the reſolution of the Judges, or by Act of Parliament, we will recite. ¶ *The juriſdiction.* See the firſt part of the Inſtitutes, Sect.

In Cancellaria apud Weſtm. coram Nicho. Bacon milite Cuſtod̃ Magni Sigilli Angliæ pro Stannatoribus, die Veneris, viz. 14 die Novembris Anno regni Elizabethæ Regnæ Quarto. Inter Martinũ Trewynarde Quer̃ in Cur̃ Stannar̃ com̃ Cornub', & Johañ Killegrew & Georgiũ Trewynard Defend.

Where the 14 day of October laſt paſt, the matter in queſtion touching the allowing or diſallowing of Writs of Error, as well between the parties afore-ſaid, as alſo for and concerning all other Writs of error touching all cauſes determinable in the Stannery Court in Cornwall, was by the order of the Lord Keeper of the Great Seal of England committed to the hearing and examination of Sir William Cordel Knight Maſter of the Rols, and Sir James Dier Knight Chief Juſtice of the Common Pleas, and Juſtice Weſton; to the intent upon the due conſideration of the cauſe they ſhould make report unto the ſaid Lord Keeper of their opinions and proceedings therein, as in their judgements ſhould ſeem moſt agreeable to juſtice and equity: who having accordingly travelled diligently for the underſtanding of the truth of the premiſes, upon the deliberate hearing and examining of the cauſe in the preſence of the Councell learned of both ſides, and upon the peruſing and conſideration of the ancient preſcriptions, cuſtomes, liberties, and Charters exhibited by the ſaid parties concerning the premiſes, have this day made their report unto the ſaid Lord Keeper as followeth, That is to ſay: That for as much as the ſaid Plaintife could not, nor did not ſhew forth any Record or preſident, whereby any judgements or executions heretofore paſſed in any of the ſaid Stannery Courts have been reverſed by Writ of Error in any of the Queens Majeſties Courts of her Bench or Common Pleas: And for that it appeareth unto them that divers and ſundry inconveniencies were likely to enſue by allowing of ſuch Writs of Error, and upon other cauſes and conſiderations them eſpecially moving: They in their opinions think it not meet nor convenient that any Writs of Error, ſhould paſſe or be ſuffered in ſuch caſe to reverſe any of the ſaid judgements or executions. Upon which report made, It is this day ordered by the ſaid Lord Keeper of the Great Seale, that the Order heretofore taken the 15 of June laſt paſt made againſt the Lord Warden of the Stanneries aforeſaid, his Officers and others mentioned in the ſame, concerning the not allowing or not executing of any Writ or Writs of Error: and all and ſingular the contempts contained in the ſame Order ſuppoſed Mich. 4 Eliz. in Cancellar. Trewynards caſe.

No Writ of Error lyeth upon any judgement in the Stannery Courts. Vide Simile Dier 23 Eliz. fo. 376. But judgements ſhall be reverſed by Appeal as in the next page appeareth.

by them to be committed, concerning the not allowing or not executing of any Writ or Writs of Error as is aforesaid, shall be clearly frustrated and void, and they and every of them clearly released & discharged, any thing in the same Order to the contrary notwithstanding. And that the said defendants and every of them shall be at their liberty to take their advantage against the said plaintife for their executions had or to be had in any of the said Stannery Courts according to the custome of the same Courts without let or impeachment of any Writ or Writs of Error or of false judgement sued or to be sued in any of the said Courts of the Kings Bench or Common Pleas. And that from henceforth no Writ or Writs of Error, or false judgement be hereafter sued in any of the said Courts of the Kings Bench or Common Pleas to reverse any judgement or judgements in any of the said Courts of Stanneries heretofore given, or hereafter to be given, untill upon further consideration of the ancient grants and liberties of the said Courts of Stanneries, or upon some other sufficient cause or matter, it shall be otherwise ordered and determined by this Court of the Chancery.

Mic. 7. Eliz. Reginæ in Camera Stellata, 29 Nov.

In Camera Stellata apud Weſtm̃ coram Concilio ibidem die Mercurii. viz. 29 die Novemb. Anno regni Dñæ Eliz. Dei gratia Reginæ, Angliæ, Franciæ, & Hiberniæ, fidei defenſor̃, &c. Septimo 1564.

Where a matter in variance hath been heretofore moved, and depending in this honourable Court, between Martin Trewynard plaintife, and John Raskarrock, William Gilbert, John Killegrew the ponger, James Drewe, and other defendants by two ſeverall Bils exhibited into this Court, whereof the laſt Bill containeth no other matters of effect being not mentioned in the firſt Bill, other then the taking of certaine cattell of the ſaid complainant and others. And where alſo it appeareth this preſent day, that the taking of the ſaid cattell was by certaine of the ſaid defendants lawfully authoriſed for that purpoſe by the Steward of the Stannery Court of Penwith and caried into the County of Cornwall for an execution upon a condemnation by judgement had in the ſaid court againſt the ſaid plaintife. Touching which condemnation the ſaid complainant hath complained as well in the Court of Chancery by Bill, and in the Kings Bench by Writ of Error, as alſo in this Court, as appeareth in the firſt of the ſaid two Bils here depending, meaning by ſome of theſe wayes to call in queſtion the validity of the ſaid judgement, and was out of the ſaid ſeverall Courts by order diſcharged and diſmiſſed, referring the proceeding upon the ſaid judgement to the order of the ſaid Stannery Court, according to divers Ordinances by divers ancient Charters, cuſtomes, and liberties belonging to the Stannery ratified by Act of Parliament. And where it doth alſo appeare that the taking of the ſaid Cattell, whereupon the ſaid laſt Bill in this Court is exhibited was only for the execution of the ſaid recovery. And where alſo it doth further appeare, that by the Lawes and Ordinances of the ſaid Stannery (if any ſuch cauſe of complaint be miniſtred) the ſame is to be redreſſed by appellation in ſeverall degrees, viz. firſt to the Steward of the Stannery Court where the matter lyeth, then to the Underwarden of the Stanneries, and from him to the Lord Warden of the ſame Stanneries: and for default of Juſtice at his hands, to the Princes Priby Councell, and not examinable either here in this Court or in any other Court. It is therefore this preſent day ordered, that the ſaid ſeverall Bils of complaints, and the ſaid defendants named in the ſame, with all the cauſes therein mentioned, be forthwith diſmiſſed out of this Court to be determined according to the ſaid Lawes and Ordinances in the ſaid Stannery, and not elſewhere.

Erroneous judgments in the Stannery are to be reverſed by appellation, and to whom this appellation ſhall be made.

The

The reſolution of all the Judges (by force of his Majeſties Letters) concerning the Stanneries in Devonſhire and Cornwall upon the hearing of the Councell learned of both parties at ſeverall dayes, and what could be alledged and ſhowed on either party, and upon view and hearing of the former proceedings in the Courts of the Stanneries both before and ſince a certaine Act of Parliament made concerning the Stanneries in * 50 E. 3. Term. Mich. 4 Jac. Regis.

* See this Act of Parliament hereafter in this Chapter.

Firſt, we are of opinion, that as well Blowers as all other labourers and workers (without fraud or covine) in or about the Stanneries in Cornwall and Devon, are to have the priviledge of the Stanneries during the time that they do work there.

Secondly that all matters and things concerning the Stanneries, or depending upon the ſame, are to be heard and determined in thoſe Courts according to the cuſtome of the ſame time out of minde of man uſed.

Thirdly, that all tranſitory actions between Tynner and Tynner, or Worker and Worker (though the cauſe be Collaterall, and not pertaining to the Stannery) may be heard and determined within the Courts of the Stanneries according to the cuſtome of the ſaid Courts, albeit the cauſe of Action did riſe in any place out of the Stanneries if the defendant be found within the Stannery; or may be ſued at the Common law at the election of the plaintife. But if the one party only be a Tynner or Worker, and the cauſe of Action being tranſitory and collaterall to the Stannery do riſe out of the ſaid Stanneries, then the defendant may by the cuſtome and uſage of thoſe Courts plead to the jurisdiction of the Court, that the cauſe of action did riſe out of the Stanneries, and the jurisdiction of thoſe Courts, which by the cuſtome of the Court he ought to plead in proper perſon upon oath. And if ſuch plea to the jurisdiction be not allowed, then a Prohibition in that caſe is to be granted. And if in that caſe the defendant do come to plead to the jurisdiction of the Court upon his oath, he ought not to be arreſted eundo, redeundo, vel morando, **at the ſuit of any ſubject in any Corporation, or other place where the ſaid Courts of the Stannery ſhall be then holden.**

Fourthly, if the defendant may plead to the jurisdiction of the Court in the caſe before mentioned, and will not, but plead and admit the jurisdiction of the Court and judgement is given, and the body of the defendant taken in execution, the party cannot by law have any action of falſe impriſonment, but the execution is good by the cuſtome of that Court. But if in that caſe it doth appear by the plaintifes own ſhewing, that the contract or cauſe of action was made or did riſe out of the Stanneries, and the jurisdiction of thoſe Courts, or if it appear by the condition of the bond whereupon the action is grounded, that the condition was to be performed in any place out of the jurisdiction of thoſe Courts, then all the proceedings in ſuch caſes upon ſuch matter apparent, are coram non Judice.

Fifthly, we are of opinion, that no man ought to demurre in that Court for want of form, but only for ſubſtance of matter. As if an action be brought there for words which will beare no action, or an action of debt upon a contract againſt Executors or Adminiſtrators, or ſuch like; In ſuch caſes a demurrer may be upon the matter. And that the proceedings there muſt be according to the cuſtome of thoſe Courts uſed time out of minde of man: for that no Writ of Error doth lye upon any judgement given there, but the remedy given to the party grieved is by appeal, as hath been time out of minde of man accuſtomed.

Sixthly, that the Courts of the Stannery have not any jurisdiction for any cauſe of action that is locall, riſing out of the Stanneries.

Seventhly, that the priviledge of the workers in the Stanneries do not extend to any cauſe of action that is locall riſing out of the Stanneries (for matters of life, member, and plea of land are by expreſſe words excepted in their Charters) and no man can be exempt from juſtice.

Vide lib. Intr. Coke fo. 467. tit. Prohibition, & fo. 23. 293. b. in Error. Vide Fleta lib. 6. cap. 7. § *Servitia vero.*

Such Charters, Records, and Acts of Parliament as we have obſerved concerning the Stannery, we will according as we have done throughout this Treatiſe recite in ſerie temporis.

Johannes dei gratia Rex Angliæ, &c. Sciatis quod intuitu Dei, & pro ſalute animæ noſtræ dedimus & conceſſimus, ac præſenti carta noſtra confirmavimus Deo, & Eccleſiæ beati Petri Exoñ, & venerabili patri * Simoni Exoñ Epiſcopo & ſucceſſoribus ſuis Exoñ Epiſcopis Decimam de antiqua firma Stanni in coñ Devoñ & Cornub. Habendum ſibi & ſucceſſoribus ſuis cum omnibus libertatibus & liberis conſuetudinibus ad eam pertinentibus per manus illius vel illorum qui Stanneriam habuerint in cuſtodia, &c.

In Regiſtro Epiſcopi Exon.

* This was Simõ de Apulia, firſt Dean of York, & conſecrate Biſhop. 8 Johan. 10 E. 2 Inquiſ. 2. nu. 29.

Rex Roberto de Courtney Salutem. Mandamus vobis quod ſine dilatione & difficultate aliqua habere faciatis * Iſabellæ Reginæ matri noſtræ Stanneriam coñ Devoñ cum Cuneo & omnibus pertinenť. Teſte Coñ Mareſchallo, &c.

Rot. Pat. 1 H. 3. m. 4.

* She was the daughter of Aymer Earl of Angoleſme.

[a] Rex conceſſit Johanni filio Rici Stanneriam in Cornubia, reddendo mille marcas, Simile Anno 5 H. 3, Rot. finium.

[a] Rot fin. 4 H. 3.

[b] Rex &c. Sciatis quod commiſimus Ricõ dilecto fratri noſtro Stanneriam noſtram Cornubiæ cum omnibus pertiñ, &c.

[b] Rot. Pat. 10 H. 3. m. 9.

[c] **There be two ſeverall Charters of liberties and privileges both bearing date** 10 Aprilis Anno 33 E. 1. **the one** made ad emendationem Stannariarum noſtrarum in Coñ Devoñ, **and the other** ad emendationem Stannariarum noſtrarum in Coñ Cornubiæ, [d] **which you may read at large in** Pl. Com. [e] **Theſe Charters were allowed in** Anno 35 E. 1.

[c] Rot. Pat. 33 E. 1. The liberties and priviledges of the Tinners.

[d] Pl. Cõ. 327, 328.

[e] 35 E. 1. in the Treaſury.

[f] **The Charter of** 33 E. 1. **was confirmed to the Tynners of Devon**, de verbo in verbum, **and the like in** 1 E. 3. **and** 17 E. 3.

[f] Rot. Pat. 4 E. 2.

[g] Vide Rot. Almaniæ, Anno 12 E. 3. part. 1. nu. 17. **An Ordinance of the King by advice of his Councell concerning Tynne.**

[g] 12 E. 3. part. 1. nu. 17.

A Leaſe made to Tideman de Linberghe de Cunagio Stanneriæ & de emptione totius Stanni in Coñ Devoñ & Cornub' pro fine mille marcarum & 3500. marcarum redditus. **Theſe were things done** de facto, **but let us turn our ſelves to that, which hath the force of a law,** viz. [h] **An excellent declaration, limitation and Expoſition of the ſaid Charters of** 33 E. 1. **that was made in the Parliament holden in** An. 50 E. 3. **by authority of the ſame, but never printed,** (**which we have ſet down** in hæc verba, **to the end that no ſyllable of the ſame ſhould be omitted**) **it is enacted as followeth.**

Rot. Pat. 21 E. 3. Vide Rot. Pat. 26 Apr. Anno 7 E. 6. Gilbert Brockhouſe.

[h] Rot. Par. 50 E. 3. holden the Monday after the Feaſt of S. Gregory.

A treſexellent & treſredout Seignour le roy, ſupplie ſa poure Commune del County de Devonſhire que luy pleaſe per l'avys des Prelats, Countees, Barons, & auters ſages in ceſt preſent Parliament ordeiner remedie de ceo que les Eſteynors, & les Miniſtres del Eſteynery del dit County ont long temps a la dit Commune ſibien as ſeigneurs come as autres fait, & font de jour in autre diverſes extortions, oppreſſions & grievances per colour de les Franchiſes a eux grantes per les Chartres noſtre ſeigneur le roy, & de ſes progenitors encontre la ley & le purport des ditz Chartres, & per lour malveis interpretation dicelles: & que les dits Chartres & les Franchiſes compriſes en ycelles puiſſēt leuz et declarez d' article en article ſi q; la Cõmune du dit county puiſſēt eſtre apris droiturelment d'ycelles, & que ceſt declaration ſoit mys en record. Et ſi nul article y ſoit en les ditz Chartres que touche cuſtomes ou uſages, que pleſe a noſtre dit ſeignieur le Roy d' ordeiner & mander en breif temps ſuffiſants Iuſtices ſeignieurs & autres apris de la ley a celles parties denquirer des dites cuſtomes & uſages, & quils eyent poyur d' oyer & terminer tous les conſpiracies, confederations, alliaunces, champerties, extortions, oppreſſions, grievances, fauxines & maintenances qu' eux les ditz Eſteynors & lour Miniſtres ont fait a la dite Cõmune, ou a nul de eux qui plendre ſe vorra, & ce auxi bien al ſuit le roy, come de la party entendants que le roy noſtre ſeignior

nior ent gaignera molt, & d' autre parte ſe remede ne lour y ſoit ore fait ilz ſerront en breife temps pur la greinder party diſherites & deſtruitz a toutz jours, que Dieu ne voilla. Le tenour d' aſcuns des articles de les dites Chartres que lour beſoignent de declaration ſenſuent cy apres premerement, Ceſt aſſavoir.

Sciatis nos ad emendationem Stannar' noſtr' in Com' Devon' ad tranquillitatem & utilitatem Stannatorum noſtrorum prædictorum eorundem conceſſiſſe pro nobis & hæredibus noſtris, quod omnes Stannatores præd' operantes in Stannariis illis quæ ſunt dominica noſtra, dum operantur in eiſdem Stannariis liberi ſint & quieti de Placitis Nativorum, & de omnibus Placitis & querelis Curiam noſtram & hæredum noſtrorum qualitercunque tangentibus, Ita quod non reſpondeant coram aliquibus Juſticiariis vel Miniſtris noſtris ſeu hæredum noſtrorum de aliquo Placito ſeu querela infra prædict' Stannarias emergentibus, niſi coram Cuſtode noſtro Stannariarum noſtrarum prædictarum qui pro tempore fuerit, (exceptis placitis terræ, vitæ, & membrorum) nec non recedant ab operationibus ſuis per ſummonitionem alicujus miniſtrorum noſtrorum ſeu hæredum noſtrorum, niſi per ſummonitionem dicti cuſtodis noſtri. Et quod quieti ſint de omnibus tallagiis, theoloniis, ſtallagiis, auxiliis & aliis cuſtumis quibuſcunque in Villis, Portubus, Feriis & Mercatis infra Com' prædictum de bonis ſuis propriis, &c.

Sur quoy pleſe declarer ſi autres perſones que les Eſtainors overants in les Eſtayneriis averont & emoyeront la Franchiſe grante per la dite Chartre du roy deſicome la dite Chartere voet, quòd omnes Stannatores prædicti operantes in Stannariis illis ſint liberi, &c. *Et autres perſones que les overours, ceſtaſcavoir lours maiſtres que les lovent & lours ſervanis & autres claymont meſme la Franchiſe. Et auxint pleſe declarer ſi les ditz overors y averont les Franchiſes en autre temps que quant ilz averont in meſme l' Eſteynery, deſicome la Chartre voet* dum operantur in eiſdem Stannariis liberi ſint, &c.

Endroit de les dites paroles. Operantes in Stannariis illis, & dum operantur in eiſdem Stannariis, *ſoient clerement entendus*, de operariis laborantibus duntaxat in Stannariis illis ſine fraude & dolo, & non de aliis, nec alibi laborantibus.

Item ſoit declare ſi meſmes les overours averont meſme les Franchiſes tant come ils averont aillors que in les deſmeſnes que feurent au Roy laiell noſtre Seignior le Roy que ore eſt. La quel Roy Ayell lour grantaſt la dite Chartre au temps del dit grant des Franchiſes deſicome la Chartre voet, quod omnes Stannatores prædicti operantes in Stannariis illis quæ ſunt dominica noſtra, dum operantur eiſdem Stannariis ſint liberi, &c. *Et ilz claymont d' avoir ſout ſoit il einſi quils overont aillours qu' en les dites deſmeſnes le roy layel.*

Endroit de ceſt article pur ce que il y a une autre article en meſme le Chartre, que lour donne conge & licence de fover, In terris, moris, & vaſtis ipſius domini regis & aliorum quorumcumque in Com' prædicto, & aquas, & curſus aquarum ad operationes Stannariarum prædictarum divertere ubi & quotiens opus fuerit, & emere buſcum ad functuram Stanni, ſicut antiquitus fieri conſuevit, ſine impedimento domini regis, hæredum ſuorum, Epiſcoporum, Abbatum, Comitum, Baronum,

ſeu

ſeu aliorum quorumcunque, &c. *Il ſemble un beſoignable choſe en ce caſe que lour cuſtumes & uſages ſoient diligemment enquiz, & que le Gardeine de Leſteynerie ſoit charge que il ne ſoeffre nul overour del dit Eſteynerie fover en prees, ne autry boys, neve abate autry boys ou autry meaſons, ne beſtover eaue ou cours de eaue per malice. Et ſi per caſe le dit gardein ſe y vorra excuſer que les dits Eſteynors ny voillent obeire a ſes maundements, ne ceſſer lour malice pur luy que tant toft il ſe face monſtrer al grand conſeil le roy, & due & haſtive remedy ent ſerra ordeignes.*

Item ſoit declares in ſpeciall comen les Juſtices que' ore ſerront aſsignes d'aller celles Marchers pur ent faire la dite enquerre prendont liſſue du pais ſi aſcun y chiete entre parties, & coment ceſte article precedont touchant les cuſtumes & uſages eſtoit uſes devant la feſaunce de la dit Chartre l' aiel, & per queux gents tielle iſſue ſerra tries, ceſtaſcavoir le quel per foreins ſolement, ou per Eſtaynors ſeulment, ou per ambideux, &c.

Endroit de ceſt article, en ſoit la vys pris du grant conſeil & y ſoient les records en Eyre ſi nulles y ſoient, & autres evidences & remembrances deins le treaſory le roy & aillours, & auxint les remembrances des ſeigniors queux y ont eſtre pur le temps ſerches & duement examines, & auxint ſoient les liures & evidences quelles les dits Eſtaynors ent ont envers eux venes & regardes, iſſint que le y purra le mieltz venir al droit verity.

Item ſoit declare ſi le Gardein del Eſtaynery puiſſe tenir plee entre Eſteynor & forein de querele ſourdant aillours que in les lieux ou ilz ſont overants deſicome la Chartre voet, quod cuſtos noſter prædictus vel ejus locum tenens teneat omnia placita inter Stannatores prædictos emergen' & etiã inter ipſos & alios forinſecos de omnibus tranſgreſſionibus, querelis, & contractibus factis in locis in quibus operantur infra Stannarias prædictas ſimiliter emergen', &c. *Quar' il tient plee de tieux quereles ſourdants chaſcune parte deins la dit counte.*

Endroit de ceſt article. Se ont extende la juriſdiction clerement ſolon les paroles del dit Chartre, ceſtaſſavoir, In locis ubi iidem operarii operantur, *& nemi aillours, ne en autre manner.*

Item pleſe declarer de ceo que la dite Chartre voet einſi. Et ſi qui Stannatorum prædictorum in aliquo deliquerint per quod incarcerari debeant per cuſtodem prædictũ arreſtentur, & in priſona noſtra de Leidford & non alibi detineantur, quouſque ſecundum legem & conſuetudinẽ regni noſtri deliberentur. *Et en ceſt caſe que Eſteinor ſoit priſe pur felony & liverez au Gardein, il eſt ſuffert ſovent aller a large de quoy grand perill avient moult de fois & auſsi de ceo que la deliverance del dit Gaole neſt paſſe fait une foitz en dis ans. Et que pis eſt per colour de meſme ceſte article le dit Gardein prent hors dautre priſon les empriſones pur arrerages ſur accompts, & les mette a Lydeford ou ilz ſont in tant fovores quilz my font force de jamays fair gree alour ſeignior,*

Endroit de ceſte article en ſoit enquiz diligemment devant les Juſtices que ore y ſerront proſchemement aſsignes denquerre per quelle authority ilz y fait einſy de puis que en meſme la Charte ſont exceptes per ſpeciall toutz plees de terre & de vie, & de membre, & celle enqueſte retourne ſoit declare en eſpeciall ſil buſoigne.

And according to this Act a Commiſſion iſſued out in theſe words.

Rot. Pat. 50 E. 3. *Edwardus Dei gratia Angliæ & Franciæ rex & dominus Hiberniæ dilectis*

lectis & fidelibus ſuis * Guidoni de Brian & Johanni de Montague, Roberto de Belknap, Hugoni de Segrave, Henrico Perchaie, & Waltero de Clopton, Salutem. Cum dominus Edwardus quondam rex Angliæ Avus noſter per Cartam ſuam quam confirmavimus ad emendationem Stannariarum ſuarum in Com' Devon' ad tranquillitatem, & utilitatem Stannatorum ſuorum earundem conceſſerit pro ſe & hæredibus ſuis, quod omnes Stannatores prædicti operantes in Stannariis illis quæ fuerunt dominica ſua, dum operentur in eiſdem Stannariis eſſent liberi & quieti de omnibus Placitis Nativorum, & de omnibus Placitis & querelis curiam ſuam & hæredum ſuorum qualitercunque tangentibus: Ita quod non reſponderent coram aliquibus Juſticiariis vel miniſtris ipſius Avi noſtri vel hæredum ſuorum de aliquo Placito vel querela infra prædictas Stannarias emergen' niſi coram cuſtode Stannariarum prædictarum qui pro tempore fuerit: (exceptis Placitis terræ, vitæ, & membrorum,) nec recederent ab operationibus ſuis per ſummonitionem aliquorum miniſtrorum dicti Avi noſtri ſeu hæredum ſuorum niſi per ſummonitionem communem dicti Cuſtodis, & quod quieti eſſent de omnibus tallagiis, theoloniis, auxiliis, ſtallagiis, & aliis cuſtumis quibuſcunque in Villis, Portubus, Feriis & Mercatis infra Com' prædictum de bonis ſuis propriis. Conceſſerit etiam eiſdem Stannatoribus quod fodere poſſunt Stannum & turbas ad ſtannum fundendum ubique in terris, meris & vaſtis ſuis & aliorum quorumcunque in Com' prædicto, & aquas, & curſus aquarum ad operationes Stannariarum prædictarum divertere, ubi & quoties opus fuerit, & emere buſcam ad functuram Stanni ſicut antiquitus fieri conſuevit, ſine impedimento ipſius Avi noſtri vel hæredum ſuorum, Epiſcoporum, Abbatum, Priorum, Comitum, Baronum, ſeu aliorum quorumcunque. Et quod cuſtos prædictus vel ejus locum tenens teneat omnia Placita inter Stannatores prædictos emergentia, & etiam inter ipſos & alios forinſecos de omnibus tranſgreſſionibus, querelis & contractibus factis in locis in quibus operentur infra Stannarias prædictas ſimiliter emergen', & quod idem cuſtos haberet plenam poteſtatem ad Stannatores prædictos & alios forinſecos in hujuſmodi Placitis juſticiandi & partibus Juſticiam faciend' prout juſtum, & prius in Stannariis illis fuiſſet uſitatum. Et ſi qui Stannatorum prædictorum in aliquo delinquant per quod incarcerari deberent, per cuſtodem prædictum arreſtarentur, & in priſona de Lydeford, & non alibi cuſtodirentur, & deliverentur, quouſque ſecundum legem & conſuetudinem regni Angliæ deliberaxentur. Et ſi aliqui Stannatorum prædictorum ſuper aliquo facto infra Com' prædictum non tangente Stannarias prædict' ſe poſuerint in Inquiſitionem patriæ, una medietas Juratorum Inquiſitionis hujuſmodi eſſet de Stannatoribus prædictis, & alia medietas de forinſecis. Et de facto totaliter tangente Stannarias prædictas fierent inquiſitiones ſicut fieri conſueverint, ſicut per inſpectionem rotulorum Cancellariæ noſtræ nobis conſtat. Ac etiam ex clamoſa inſinuatione tam magnatum quam Communitat' Com' prædict' in præſenti Parliamento noſtro graviter conquerentium ad noſtrum pervenerit auditum, quod Stannatores prædicti ac officiarii, balivi & miniſtri dict' Stannariæ Cartam prædictam pro libito ſuæ voluntatis interpretantes, & debitum intellectum ejuſdem Cartæ pervertentes, & etiam excedentes, ac quidam alii in magno numero aſſerentes ſe fore Stannatores cum non fuerint, habitis inter eos conſpirationibus, confœderationibus & alligantiis, quamplurima extorſiones, oppreſſiones, falſitates, deceptiones, Combi-

partias

* Theſe two former were Barons and Lords of Parliament, and ſat in the laſt Parliament of 50 E. 3.

Pleas of land, life and member are excepted.

partias, ambidextras, manutenentias, transgressiones, damna, gravamina & excessus diversis subditis nostris dict' Com' colore Cartæ supradictæ per plures vices fecerunt, & indies facere non desistant in nostri contemptum & ipsorum conquerentium grave præjudicium, dict' Com' verisimilem destructionem & eversionem manifestam. Nos affectantes singulos subditos nostros sub quieto & debito regimine gubernare, & nolentes tanta maleficia, si per prædict' Stannatores, Officiarios, Ballivos vel Ministros, aut alios quoscunque perpetrata existunt, aliqualiter transire impunita; Assignavimus vos, quinque, quatuor, tres & duos vestrum, (quorum vos præfat' Robert' unum esse volumus) Justiciarios nostros ad inquirendum per sacramentum proborum & legalium hominum de Com' prædict' tam infra libertates quam extra, per quos rei veritas melius sciri poterit, & aliis viis & modis quibus melius fore videritis de quibuscunque conspirationibus, confœderationibus, alligantiis, extortionibus, oppressionibus, falsitatibus, deceptionibus, cambipartiis, ambidextris, manutenentiis, transgressionibus, damnis, gravaminibus & excessibus per quoscunque Stannatores vel alios in Com' prædict' factis, & per quos vel per quem, quibus personis, ubi & quibus temporibus, qualiter & quomodo, & de aliis articulis & circumstantiis præmissa qualitercunque tangentibus plenius veritatem; & ad præmissa omnia & singula tam ad sectam nostram quam dictorum conquerentium & eorum singulorum & aliorum quorumcunque pro nobis, aut pro seipsis prosequi volentium, audiend' & terminand' secundum legem & consuetudinem regni nostri Angliæ: Salvis semper dictis Stannatoribus libertatibus & privilegiis eis per Cartam prædictam concessis. Et ideo vobis mandamus quod ad certos diem & loca quos vos, quinque, quatuor, tres vel duo vestrum (quorum vos, præfat' Robert' unum esse volumus) ad hoc provideritis diligenter super præmissa faciatis inquisitiones; & conspirationes, confœderationes, alligantias, extortiones, oppressiones, falsitates, deceptiones, cambipartias, ambidextras, manutenentias, transgressiones, damna, gravamina, & excessus prædicta audiatis & terminetis in forma prædicta, facturi inde quod ad justiciam pertinet, secundum legem & consuetudinem regni nostri Angliæ. Salvis nobis amerciamentis & aliis ad nos inde spectantibus. Mandavimus enim Vic' Com' prædict' quod ad certos diem & loca quos vos, quinque, quatuor, tres vel duo vestrum (quorum vos præfat' Roberti' unum esse volumus) ei scire fac', Venire fac' coram vobis quinque, quatuor, tres vel duobus vestrum tot & tales probos & legales homines de baliva sua tam infra libertates quam extra, per quos rei veritas melius sciri poterit & inquiri. In cujus rei testimonium has literas nostras fieri fecimus patentes. Teste me ipso apud Westm' Sexto die Julii, Anno regni nostri Angliæ 50. Regni vero nostri Franciæ 37. Per consilium in Parliamento.

But what was done upon this Commission we have not yet found.

Rot. Pat. 8 R. 2. The said Charter of 33 E. 1. to the Tynners of Cornwall was confirmed.

Rot. Pat. Anno 1 E. 4. And the Charter of 33 E. 1. to the Tynners of Devon' was also confirmed.

Rot. Pat. 3 H. 7. The like confirmation to the Tynners of Devon'.

See the statute of 11 H. 7. cap. 4. concerning Tunage and Weights.

Mich. 4. Jac. In Camera Stellata. It was resolved by the whole Court that Stannum, Tyn, otherwise whitelead, nor black lead, nor any other base metall did belong to the King by his Prerogative, as gold and silver doe, albeit there may be tried out of the base metall

metall gold or ſilver, but that is as the ſeed or ſtrength of the baſe metall, which being extracted becomes defective.

There be Five kindes of baſe metals, *viz.* Æs, five Cuprum (becauſe it was found out, as ſome hold, in Cypro) Copper, Stannum Tynne, Ferrum Iron, Plumbum Lead, & Orichalcum Latyn. Polybius 209 yeares before Chriſt wrote that this Iſland was abundantly ſtored with Tynne. Britanni qui juxta * Belerium promontorium incolunt mercatorum uſu, qui eo Stanni gratia navigant, humaniores reliquis erga hoſpites habentur, hii ex terra ſaxoſa cujus venas ſectati effodiunt Stannum igne eductum in quandam Inſulam ferunt Britannicam juxta, quam Vectam vocant: Ex hiis Inſulis mercatores emptũ ſtannum in Galliam portant, inde diebus fere triginta cum equis ad fontem Eridani fluminis perducunt. Polybius lib. 3, Plinius lib. ca. 8, 9 Diodorus Siculus lib. 5. ca. 8. fo. 142. floruit ſub Auguſto.

* Aut Veſtæũ, i. *the Cape of Cornwall.*

See M. Camden, pa. 134. in Cornwall.

And for as much as Tynne is a Staple commodity, let us in the next place treat of the Court of the Mayor of the Staple.

CAP. XLVI.

The Court of the Mayor of the Staple.

This Court is guided by the Law Merchant, which is the law of the Staple, and is holden at the Wool-ſtaple at Weſtm. And there are alſo two Conſtables, [a] and a certain number of Correctors to doe that which pertaineth to their Office, as in other Staples is accuſtomed.

[a] 27 E. 3. cap. 22. See the firſt part of the Inſtitutes. Sect. 3. verb. *in la ley. m.*

This Court (though it was far more ancient) is ſtrengthened and warranted by Act of Parliament, which can beſt expreſſe the juriſdiction thereof, and followeth in theſe words. 27 E. 3. cap. 19

Item, becauſe the Staples cannot long continue, nor the Ordinances thereof made and to be made be kept, if good executors and Juſtices be not ſtabliſhed to make thereof good and ready execution: We have ordained and eſtabliſhed, that in every Town where the Staple is ordained, a Mayor, good, lawfull, and ſufficient ſhall be made and eſtabliſhed, having knowledge of the Law Merchant, to governe the Staple, and to doe right to every man after the law aforeſaid, without favour, ſparing, or griefe doing to any. And in every place where the Staple is, ſhall be two convenable Conſtables now at his beginning put by us, to doe that pertaineth to their office, as in other Staples is accuſtomed; and when they ſhall be dead or changed, then other ſhall be choſen by the Comminalty of the Merchants of the ſaid places. And that no Mayor hold the Office over the year, unleſſe he be newly choſen by the Comminalty of the Merchants, as well of Strangers, as of Denizens: And that the ſaid Mayor and Conſtables have power to keep the peace, and to arreſt offenders in the ſtaples for debt, treſpaſſe, or other contract, and them to put in priſon, and puniſh after the law of the Staple. And a priſon ſhall be ordained for the ſafe keeping of them that ſo ſhall be impriſoned. And the Mayors, Sheriffs, and Bailifs of the Towns, where the Staple is, or joyning to the Staple, ſhall be attending to the Mayor and Miniſters of the Staple to doe execution of their commandments upon pain of grievous forfeiture: and one Lord or other of the moſt ſufficient in the Country where the Staple is, ſhall be aſſigned to

27 E. 3. ſtat. 2. c. 21.

¶ *The Juriſdiction.*

The Law Merchant.

be aide to the Mayor and Miniſters of the Staple to juſtifie the Rebels, which by the ſaid Mayor and miniſters cannot be juſtified, and to maintain and counſell them when need ſhall be to the good governance of the Staple, and to redreſſe at every mans complaint that that ſhall be done amiſſe by the ſaid Mayor or Miniſters, or other, and to do right to the complainants in this behalf. And that the ſame Mayor and Conſtables do not, nor ordaine any thing contrary to this Ordinance, nor make interpretation nor exception to them otherwiſe then the words do purport, but if there be any thing that is doubted, it ſhall be ſhewed to our Councell, and there declared by good advice.

[a] See the ſtatute of 36 E. 3. cap. 7. That Merchant ſtrangers may either ſue before the Mayor of the Staple according to the law Merchant, or at the Common law.

[b] The bounds of the Staple at Weſtm. begin at Temple Bar, and extend to Tuthill. In other Cities and Towns, within the walls: where no walls be, the bounds of the Staple ſhall extend through all the City or Town.

[c] See 27 E. 3. how triall ſhall be had per mediotatem linguæ: & vide 11 E. 1. Cart' Mercator'.

[d] See the ſtatute of 27 E. 3. that the Mayor of the Staple may take Recognizances of debt under the ſeal of the Office, but not with the ſeal of the party, and how execution ſhall be done thereupon.

[e] The Mayor of the Staple at Weſtm. and the Recorder of the City of London, in the abſence of the two Chief Juſtices, out of Term have power to take Recognizances of debts according to the form of the ſtatute of 23 H. 8. And this is in nature of a ſtatute Staple, but it hath beſides the ſeal of thoſe that take it, the ſeal of the party.

[f] The Mayor and the Conſtables ſhall be ſworn in the Chancery to doe lawfully that which pertaineth to them.

[g] There are 3 the Staple Merchandiſes of England, viz. Wooll, Woolfells, Leather, Lead, and Tynne.

This word Staple, anciently written [h] Eſtaple, commeth of the French word Eſtape, which ſignifieth a part or Market. So as the Court of the Staple is, as much to ſay, as the Court in the Staple Market, and is incident to that Market, [i] and it hath oftentimes kept at Calice, and ſometimes in Bridges in Flanders, and at Antwerpe, Middleburgh, &c. (and therefore it was neceſſary that this Court ſhould be governed by law Merchant) and at ſeverall times in many places within England, and now (as hath been ſaid) is kept at Weſtm.

We uſe for this word Staple, Stapula, as Major Stapulæ, Statutum Stapulæ &c. And we may truly ſay that we have not umbratilem Stapulam, which in times paſt was ſo ſtrictly held a Sanctuary, as it enriched every place where it was holden, and it was commonly ſaid, that riches followed the Staple.

See the Statute of 2 E. 3. cap. 9. and a Writ thereupon. 7 E. 3. in Scaccario. [l] Et Original de Scaccario Anno 12 E. 3. Rot. 2. ibid. 13 E. 3 Rot. 12. & Rot. Pat. 13 E. 3. 2 part. See the Statute of the Staple Anno 27 E. 3. through all the Chapters, 36 E. 3. cap. 7. 28 E. 3. cap. 13. 14. 43 E. 3. ca. 1. 12 R. 2. cap. 16.

[a] 36 E. 3. cap. 7. Rot. Par. 6 H. 6. nu. 29.

[b] 28 E. 3. ca. 15. *The bounds of the Staple.*

[c] 27 E. 3. ca. 8. 28 E. 3. ca. 13. Rot. Cart. 31 E. 1. nu. 44.

[d] 27 E. 3. cap. 9. F. N. B. 131. d. Pl. com. 62. b. 15 H. 7. 16. Fleta lib. 2. ca. 57. See 5 H. 4. ca. 11.

[e] 23 H. 8. cap. 6.

[f] 27 E. 3. cap. 23.

[g] 8 H. 6. cap. 17.

[h] 27 E. 3. cap. 8. Dier 4. Mar. 144.

[i] Vid. *Cart. Mercator. ubi ſup.* Merchants, as well Strangers as Subjects, and Merchandiſes.

[k] Able to furniſh the King with money. Rot. Parl. 7 E. 4. nu. 9. 12 E. 4. nu. 59. Rot. Parl. 9 R. 2. nu. 4.

[l] Original. de Scac.

[7] E. 3. Rot. 9.

CAP.

CAP. XLVII.

Of the legall Courts and their juriſdictions within the Principality of Wales.

This Principality conſiſteth of 12 Counties, whereof 6. viz. Angleſea, Carnarvan, Merioneth, Flint, Carmarthen, and Cardigan were erected by the Act intituled Statutum Walliæ Anno 12 E. 1. [b] and the reſt by the ſtatute of 27 H. 8.

Wallia, Wales, ſo called by the Saxons *Brytwealas*, unde Wallenſes, [c] Walli, *i.* exteri ſeu peregrini: and the Britons call Engliſhmen to this day Saiſons: theſe are of the poſterity of the ancient Britons inhabiting on the Weſt part of great Britany. This was ſometime [d] a Realm or Kingdome and governed per ſuos regulos. [e] Rex E. dedit Regi Griffino totam terram quæ jacebat trans aquâ quæ vocatur [f] Sed poſtquam ipſe Griffin forisfecit ei, abſtulit ab eo hanc terram, & reddidit Epiſcopo Ceſtriæ & omnibus ſuis hominibus, qui ante ipſam tenebant.

[g] By force of a Commiſſion directed to divers diſcreet and learned men as well Engliſh as Welſh, *viz.* Griffith ap Lluellin, Gitten Owen, John King and others it was found that Owen ap Meredith ap Theodore which married Katherine daughter of France and Dowager of King H. 5. was lineally deſcended from [h] Cadwallader King of the Britains, and gave the Armes of the Princes of Wales.

And here we are juſtly occaſioned to diſcover the error of thoſe that have given to our late Soveraigne Lady Queen Elizabeth, of ever glorious and bleſſed memory, the ſirname of Tydur, and conſequently to her Grandfather, Father, Brother, and Siſter: which whether it were out of ignorance or malice ſome do queſtion, becauſe if ſhe had any ſirname at all it was Theodore and not Tydur, which is a nick or by-name. But we rather take it to grow out of ignorance, for that in truth ſhe had no ſirname at all: for this Owen her Anceſtor had no ſirname: and therefore was called Owen ap Meredith, that is, the ſonne of Meredith ap Theodore, (the ſonne of Theodore) ap Grono &c. All which were Chriſtian names: ſo as they ſhould rather have called her Elizabeth Owen, his own name, or Elizabeth Meredith, his fathers name, then Theodore his Grandfathers Chriſtian name: but Almighty God would not ſuffer her to have a ſirname, becauſe by his grace and goodneſſe ſhe ſhould deſerve for her Imperiall vertues to be called [i] Elizabeth the Great.

[k] But jure feodali the kingdome of Wales was holden of the Crown of England, & thereby as Bracton ſaith, was ſub poteſtate regis. And ſo it continued untill the 11 year of the reign of King E. 1, when he ſubdued the Prince of Wales riſing againſt him, and executed him for treaſon, whereof Fleta who lived in thoſe dayes ſpeaketh thus. Et unico malefactori plura poterunt infligi tormenta, ſicut contigit de Davide Principe Walliæ cum per Edwardum quinque judiciis mortalibus torquebatur. ſuis namq; meritis exigentibus, detractus, ſuſpenſus, diſmembratus fuit & combuſtus, cujus caput principali Civitati, quatuorq; quarteria ad quatuor partes regni in odium tradit deferebatur ſuſpendend'.

[m] The next year, viz. in the 12 year of King E. 1. by authority of Parliament it is declared thus, ſpeaking in the perſon of the King (as ancient ſtatutes were

See W. 1. cap. 17. the ſecond part of the Inſtitutes, pa. 195.

[b] Statutum Walliæ Anno 12 E. 1. in vet. Mag. Car. 1. part. 2. fo. 3.

[b] 27 H. 8. ca. 26. 34 H. 8. cap. 26.

[c] Lamb. Verb. Wallus. 15 E. 3. Record. 38. & tit. Error. 2 H. 5. cap. 6. 19 H. 6. fo. 12.

[d] Realme from the French word *Roiaume*, and both à *Regno*.

[e] Domeſday in Com. Ceſtr. Ep. Ceſtr.

[f] Domeſday in Com. Hereford. Rex in Arenfield. Rex Griffin & Ble vaſtaverunt hanc terram T. R. Quandoque Rex Griffin nominatur Rex Mariadoc.

[g] Rot. pat. Anno 7 H. 7.

[h] Cadwallader King of the Britains, Mat. Parker Archiep. M. S.

[i] This bleſſed Queen raigned the years of Auguſtus, and lived the age of David, a King elder then any King or Queen ſince the Conqueſt, and yet had *vegetum corpus & vividum ingenium*.

[k] Lib. 7. fo. 21. b. in Calvins caſe. Tr. 5 E. 3. 40. alien. Bracton b. Dier 3. Mariæ

(who wrote *tempore* H. 3.) lib. 5. fo. 395. b. Fleta lib. 1. cap. 16. 10 H. 4. fo. 6. acc'. Pl. com. 129. a. 213. [m] Statutum Walliæ Anno 12 E. 1. Vid. 10 H. 4. fo. 6.

wont to do) Divina providentia, quæ in ſua diſpoſitione non fallitur, inter alia ſuæ diſpenſationis munera, quibus nos & regnum noſtrum Angliæ decorari dignata eſt, terram Walliæ cum Incolis ſuis prius nobis * jure feodali ſubjectam jam ſui gratia in proprietatis noſtræ dominium, obſtaculis quibuſcunque ceſſantibus, totaliter & cum integritate convertit & coronæ regni prædicti, tanquam partem corporis ejuſdem annexuit & univit. Yet this wiſe and warlike nation was long after this not ſatisfied nor contented, and eſpecially, for that they truly and conſtantly took part with their rightfull Soveraigne and liege Lord King Richard the Second; In revenge whereof they had many ſevere and invective lawes made againſt them in the reigns of H. 4. H. 5. &c. All which as unjuſt are repealed and abrogated. And to ſay the truth, this Nation was never in quiet, untill King H. 7. their own countryman obtained the Crown. [b] And yet not ſo really reduced in his time, as in the reign of his ſonne King H. 8. in whoſe time by certaine juſt lawes made at the humble ſuit of the Subjects of Wales, the Principality and Dominion of Wales was incorporated and united to the Realm of England; and enacted that every one born in Wales, ſhould enjoy the Liberties, rights, and lawes of this Realm, as any ſubjects naturally born within this Realm ſhould have and inherit, and that they ſhould have Knights of Shires and Burgeſſes of Parliament, &c. By the which the jurisdiction of the legall Courts are thereby ſo perfectly and plainly eſtabliſhed and declared, and their proceedings to be according to the lawes and cuſtomes of England, as we have thought good to refer the judicious reader to thoſe Acts of Parliament without rectitall of them, where he ſhall find the excellent venerable variety of Seats and Courts of Juſtice, with their proper jurisdictions according to the lawes of England, the golden ſpetwand, whereby all mens cauſes are juſtly and evenly meaſured. Only we will adde certain things which have not been publiſhed before.

By the ſaid ſtatute of 34 H. 8. it is enacted that there ſhall be holden and kept Seſſions twice every year in every of the ſaid [c] twelve Shires, that is to ſay, Glamorgan, Brecknock, Radnor, Carmarthen, Pembroke, Cardigan, Mountgomery, Denby, Flint, Carnarvan, Merioneth, and Angleſie, which Seſſions ſhall be called the Kings Great Seſſions of Wales.

[d] A fine was levied of lands in the County of Carmarthen, and the Writ of Covenant was Coram Juſticiariis noſtris magnæ Aſſiſæ in com Carmarthen, and becauſe all the judiciall preſidents were in that forme ever ſince the making of the ſtatute, it was adjudged to be good, for Communis error facit jus.

Also in the ſaid Act of 34 H. 8. it was enacted, that the Kings moſt Royall Majeſty ſhould from time to time change, &c. all manner of things before in that Act rehearſed, as to his moſt excellent wiſdome and diſcretion ſhould be thought convenient, and alſo to make Lawes and Ordinances for the Common-wealth of his ſaid Dominion of Wales at his Majeſties pleaſure, &c. And albeit the common opinion was that the ſame power in ſo high a degree of truſt, as the alteration of lawes, &c. was perſonall to H. 8. and referred to his wiſdome, diſcretion, and pleaſure, and therefore extended not to his ſucceſſors, yet for that the ſubjects of the Country and Dominion of Wales had been conſtantly loyall and obedient, and had lived in all dutifull ſubjection to the Crown of England, to prevent all queſtions and danger the ſaid branch of the ſaid ſtatute of 34 H. 8. is repealed and made void.

It was reſolved by all the Juſtices upon a reference made to them by the Lords of the Privy Councell upon conſideration had upon the ſtatutes of 34 H. 8. cap. 26, and 18 Eliz. cap. 8. that the Juſtices in Wales are to be conſtituted and made by Letters Patents, as they had been ever ſince the making of the ſtatutes, and not by Commiſſion. And upon report of their opinion to the Lord Chancelour Baron Snigge was conſtituted and made by Patent accordingly.

Rex dilecto & fideli ſuo Ricõ Damory Juſticiar ſuo Northwalliæ Salutem. Mandamus vobis quod habito adviſamento cum illis hominibus de partibus prædictis, cum quibus melius fore videritis faciend diverſimode ſine dilatione venire faciatis

* Note, divers Monarchs hold their Kingdome of others *jure feodali*. As the Duke of Lumbardy, Cicill, Naples, and Bohemia of the Empire. Granado, Leons of Aragon. Navarre, Portugall, of Caſtile. And ſo others. Doct. Claus. 15 E. 2. m. 13 *De Walleníbus ad Parl. apud Eboram venire fac.* viz. 24 *de diſcretioribus, legaliorib⁹ & validioribus hominibus de partibus Southwalliæ, & 24 de partibus Northwalliæ.* Rot. Claus. 20 E. 2. m. 3. accord. 21 Jac. ca. 28.

[b] 27 H. 8. ca. 26. 34 H. 8. ca. 26. 37 H. 8. ca. 26. 18 Eliz. cap. 7.

[c] *The twelve Counties of Wales.*

[d] Trin. 34 Eliz. in the caſe of Morgan of the report of the Chiefe Juſtice Popham.

So it was reſolved by divers Juſtices in Hil. 5 Jac. Regis.

21 Jac. regis c. 10.

Hil. 5 Jac.

Rot. Claus. Anno 20 E. 2. m. 3.

faciatis ad præſens Parliamentum apud Weſtm. convocatum 24 homines de partibus illis tam Anglicos quam Wallenſes ad conſentiendum hiis quæ ibid. pro communi commodo & pace & tranquillitate regni noſtri & partium præd. favente Domino contigerit ordinari, Et habeatis ibi nomina præd. 24 hominum, & hoc bře. Teſte Rege apud Kenilworth 11 Januarii Anno 20 E. 2. Rot. Clauſ. m. 3.

12 were Engliſh and 12 Welſh. Rot. Clauſ. 15 E. 2. in dorſ. m. 13. Wallenſes vocat. ad Parliamentum.

By this and others of like nature it appeareth that Welſhmen were in the reigne of E. 2. E. 3. &c. called to our Parliaments.

But now ſeeing there be Sheriffs throughout all Wales, the Writs are directed to the Sheriffs to cauſe to be elected Knights, Citizens, and Burgeſſes, and retorned into the Chancery, where before they were retorned into the Parliament.

7 H. 4. cap. 15. 11 H. 4. cap. 1. 1 H. 5. cap. 1. 8 H. 6. cap. 7. 10 H. 6. cap. 2. 23 H. 6. cap. 15. 6 H. 6. cap. 4. 27 H. 8. cap. 26. 34 H. 8. cap. 26. 35 H. 8. cap. 11.

We have ſeen a Charter of the Earle of Arundell proving, that by the ancient cuſtome of Wales, females could not inherit.

Marchia Walliæ.

Omnibus Chriſti fidelibus præſens ſcriptum inſpecturis Johannes Comes Arundel & Dominus de Mautravers, Salutem in Domino. Sciatis nos prædict. Comitem ad proſecutionē & ſpecialem ſupplicationem Communitatis Tenen' noſtrorū tam duarū partium quam tertiæ partis Dominii noſtri de Oſewaldeſtrie in Marchia Walliæ conceſſiſſe pro nobis & hæredibus noſtris & per præſentes confirmaſſe Tenen' noſtris prædict', hæred' & aſſig. ſuis, quod eorum filiæ pro defectu exit' maſculini, ac eorum proximi conſanguinei, tam maſculini quam femellæ de cætero hæreditare valeant imperpetuum terras, tenementa & reddit' anteceſſorum & conſanguineorum ſuorum ubique infra Dominium noſtrum præd' eiſd' modo & forma quibus utitur in communi lege Angliæ, Wallica conſuetudine prius ibid. de contrario uſitat' in aliquo non obſtante: Salvis ſemper nobis & hæred' noſtris heriotis, releviis, ſect' cur' & al' conſuetudinibus quibuſcunq; de dictis terris & tenementis ante hanc noſtrā conceſſionem nobis quomodolibet pertinen'. In cujus rei teſtimonium huic præſenti ſcript' noſtro conceſſionis Sigillum noſtrum fecim' apponi: Hiis teſtibus, Willielmo Ryman, Thoma Baret, Willielmo Sideney Armigeris, Hugone Burgh, ceñ Dominii noſtri præd', Rich. Irlond, Hoel ap Ogū Gouch, & aliis. Dat' in hoſpitio noſtro London viceſimo quinto die menſis Aprilis An. regni Regis Henrici Sexti poſt conqueſtum Octavo.

Wallica conſuetudo.

At this day women are inheritable in Wales, according to the Common law in England.

* Ordinatio de conſuetudinibus Northwalliæ & Weſtwalliæ.

* 9 E. 2. m. 3.

Theſe Britons were ever lovers of the laws of England, for at the Parliament holden [a] **in 4 H. 4. they petitioned the King, that in all caſes of the Crowne throughout every Liberty in Wales the laws of England might be only uſed. Whereunto the King yeelded, and that his Councell ſhould take order therein.**

[a] Rot. Par. 4 H. 4. nu. 100. [b] Rot. Par. 13 E. 1. m. 21. Vid. Hil. 20 E. 1. coram Rege. Ro. 37. 22 Wallis. Paſch. 10 E. 2. coram Rege. Rot. 37. 18 E. 2. Rot. 73. Trin. 5 E. 3. Rot. 40. coram Rege.

[b] Quia Epiſcopi Wallenſes ex antiqua conſuetudine teſtamentum aliquod condere non potuerunt, Rex licentiam dedit Epiſcopo Bangor, quod poſſit condere teſtamentum ſuum non obſtante quod Epiſcopi Wallenſes ex antiqua conſuetudine teſtamentum aliquod condere non poſſunt. **See the Chapter of the Conſiſtory Courts of Arch-Biſhops and Biſhops,** fol.

[c] **Where execution ſhall be made of lands in the Marches by the Sheriffe of the County next adjoyning,** ſicut ſolebat antiquitùs. **See the Record at large.**

[c] Hil. 18 E. 2. Rot. 73. cor. rege. Glec.

[d] **Aſſach is a Brittiſh word and ſignifieth a cuſtome in Wales, which was to excuſe one of the death of a man by the oath of 300 men. But this ſtrange kinde of excuſe or acquitall is abrogated by ſtatute.**

18 E. 2. aſſ. 382. Rot. Parl. 18 E. 2. Rot. 3. 13 E. 3. juriſdiction. 33.

[e] **There was alſo a certain triall in Wales called a Raythe, but that is alſo abrogated.**

28 E. 2. ca. 2. 5 E. 3. fo. 30. 45 E. 3. bře 588. 21 H. 3. bře 881. ſimile. [d] 1 H. 5. cap. 6. [e] 6 H. 6. nu. 33.

CAP.

CAP. XLVIII.

The Court of the Preſident and Councell in the Dominion and Principality of Wales, and the Marches of the ſame.

Leaving now the Legall Courts in the Dominion of Wales, to proceed by the right rule, ſecundum legem & conſuetudinem Angliæ, Let us ſpeak ſomewhat of the Court of Equity before the Preſident and Councell there.

Ro. Par. 16 R. 2. nu. 44. there was a Preſident of Wales. 34 H. 8. cap. 26.

This Court is ſtrengthened and warranted by the ſtatute of 34 H. 8. Ca. 26. with a reference to preſcription before it, in theſe Words.

Item, that there ſhall be, and remain a Preſident and Councell in the ſaid Dominion and Principality of Wales, and the Marches of the ſame, with all Officers, Clerks, and incidents to the ſame in manner & forme as heretofore hath been uſed and accuſtomed: which Preſident and Councell ſhall have power and authority to hear and determine by their wiſdomes and diſcretions ſuch cauſes and matters as be, or hereafter ſhall be aſſigned to them by the Kings Majeſty, as heretofore hath been accuſtomed and uſed.

They ſit by force of the Kings Commiſſion and Inſtructions, and proceed as in a Court of Equity by their wiſdomes and diſcretions. Herefordſhire, Worceſterſhire, Shropſhire, and Gloucesterſhire are included within this Commiſſion, pretending that theſe Four Shires are within the Marches of Wales.

That theſe Four Shires are no part of the Marches of Wales but ancient Shires of the Realm of England, appeareth by Six manner of proofs.

First, by expreſſe Books, viz. 18 E. 2. Aſſ. 82. 1 E. 3. 14. in Dower. 7 E. 3. 9 E. 3. in Dower. 6 H. 4. fo. 9. in Scire fac'. F.N.B. 168.

Secondly, by Acts of Parliament, viz. Prærog. regis. 17 E. 2. cap. 1, 28 E. 3. cap. 2, 2 H. 4. cap. 12. & 16, 17. 23 H. 6. cap. 5. 27 H. 6. ca. 4. 31 H. 6. ca. 4. 32 H. 8. cap. 13. 13 El. cap. 13.

Thirdly, by Records of Parliament. 3 R. 2. nu. 29. & 30.

Fourthly, by reaſon. 1. Theſe four Shires were ancient Engliſh Shires, and governed by the laws of England, and not by the diſcretion of the Preſident and Councell: and this were to bring their inheritances, goods, &c. ad aliud examen. 2. At one and the ſame time there were in former times Earls of the Marches of Wales, and ſeverall Earls of theſe four Counties, and therefore they could not be one and the ſame.

See before in the Chapter of the County Palatine of Cheſter. p. 212.

Fifthly, by the reſolution aforeſaid of thoſe four Judges concerning Cheſhire and Flintſhire (which were included alſo within the Commiſſion) that they were not within the Marches of Wales, and therefore out of the juriſdiction of the Preſident and Councell, and ſo remain untill this day: For a Commiſſion without an Act of Parliament cannot raiſe a Court of Equity, as often hath been ſaid before.

Mich. 2 Jac. régis the care of Edward Lord Zouch Preſident of Wales.

Laſtly, by the commandment of the King, all the Juſtices of England, and Barons of the Exchequer were aſſembled concerning the juriſdiction of the Preſident and Councell of Wales, and the Marches of the ſame, who upon hearing of Councell learned on divers days, and upon mature deliberation reſolved una voce, that the ſaid Four Counties were not within the juriſdiction of the Preſident and Councell. 2. That foraſmuch as the Preſident and Councell have

a limited authority if they proceed in any matter that is out of their juriſdiction either in reſpect of the place or of the authority limited to them, a prohibition may be granted, as to the ſpecialities and the like. Which reſolution being made known to his Majeſty, his Majeſty was graciouſly pleaſed, that the Lord Preſidents Commiſſion ſhould be reformed: whereupon the Lord Zouch gave over his place. And yet the Commiſſion was not after reformed in all points, as it ought to have been.

Regiſt. 4 & 8. F.N.B. 39.b.45.E. 46.a.171.159. 184, 186, 187. 19 H.6.54.

Rodry Maure, or Rodry the great, King of Wales, ſon of Merlyn Fryth had iſſue three ſons, Mervyn, Anarawd, and Cadelh. In the year wherein he died, viz. Anno dom. 877. (King Alfred, aliàs Alured, then reigning in England) this great Rodry divided his Kingdome of Wales into three Principalities. The firſt he called Guyneth, the Engliſh North-wales, the Latine Venedotia. The ſecond Principality was called Powis land, in Latin Powiſia, or ſome Weſt-wales, bordering upon England. The third he called Dehevbarth, the Engliſh South-wales, in Latin Demetia. The firſt Principality, ſome ſay, he gave to Mervin, aliàs others, to Anarawd. The ſecond to Anarawd, ſome ſay, to Cadelh. The third to Cadelh, ſome ſay, to Mervyn. The firſt was the beſt, becauſe it was the quieteſt. The ſecond was often invaded and troubled by the Engliſh. Into the third often incurſions were made by the Engliſh, the Norman, and the Flemming. The diviſion of this Kingdome (howſoever it was) wrought in proceſſe of time ſuch a diviſion between theſe Princes, as it was never quiet untill it came under one Monarch and King again: For the royall dignity of a Monarch or King, from whence all other ſubordinate dignities, tanquam lumen de lumine, are derived without any diminution, will ſuffer no diviſion. Regia dignitas eſt indiviſibilis; & quælibet alia derivativa dignitas eſt ſimiliter indiviſibilis.

This is added for the better underſtanding of Records and Hiſtories concerning Wales.

The moſt woefull event that fell out in this Realm, when Gorbodug divided this Kingdome between his two ſons, Ferrex and Porrex, and what heavy event came to paſſe, untill it was reduced again under one Monarch, let our Hiſtories tell you: And letting paſſe others, I cannot over-paſſe the miſerable eſtate within this Kingdome under the Heptarchy, untill all was reunited under one Soveraign. And this is the reaſon, that in England, Scotland, and Ireland, the royall dignity is deſcendible to the eldeſt daughter or ſiſter, &c.

But let us look a little into forain parts. Oedipus King of the Thebanes had iſſue two ſons, Polynices, and Eteocles: he ordained, that after his deceaſe, his two ſons ſhould alternatim by courſe, &c. reign in his Kingdome. But what was the event? Fratres de regni hæreditate diſſidentes ſingulari certamine congreſſi mutuis vulneribus ceciderunt. But to return again to our Wales.

Sta. in Theb.

It is divided from England by a ditch after the name of that King that made it, called King Offa his ditch.

Cambden in the County of Radnor.

King E. 3. at the Parliament holden Anno 17. of his reign, by Charter eſtabliſhed by Authority of Parliament, created Edward (called the black Prince) Prince of Wales in theſe words, De Conciliо Prælatorum, Comitum, Baronum & Communium in generali Parliamento noſtro apud Weſtm' die Lunæ in Quindena Paſchæ proxime præteritio convocato ipſũ Edw: Principem Walliæ fecimus & creavimus, & dictum Principatum ſibi dedimus & conceſſimus, & per Cartam noſtram confirmavimus, ac ipſum de dicto Principatu, ut ibidem præficiendo præſideat, & præſidendo dictas partes dirigat & defendat, per [a] ſertum in Capite, & annulum in digito aureum, ac [b] virgam argenteam inveſtivimus juxta morem: Habendum & tenendum de nobis ſibi & hæredibus ſuis Regibus Angliæ imperpetuum, &c. But of this Charter we obſerve, that in this Creation there is a great myſtery, for leſſe then an eſtate of inheritance ſo great a Prince could not have, and an abſolute eſtate of inheritance in ſo great a Principality as Wales, the Kings meaning was (this Principality being ſo dear unto him) he ſhould not have: therefore a qualified fee therein he had in this form, ſibi & hæredibus ſuis Regibus Angliæ, that by his deceaſe, or attaining to the Crown this dignity might be extinguiſhed in the Crown, to the end that the

Carta creationis Principis Walliæ Authoritate Parliamenti, Anno 17 E.3.

[a] A Chapelet of gold made in form of a Garland.

[b] This virge, rod, or Scepter in latter creations for more honor is changed from ſilver to a Verge or Scepter of gold.

Sibi & hæredibus regibus Angliæ.

King

bing for the time being ſhould ever have the honor and power to create his heir apparent Prince of Wales, as he himſelf had been by his Progenitor. But otherwiſe it is in caſe of the Dutchy of Cornwall as in the Princes caſe, ubi ſup. appeareth.

See the Princes caſe, Lib. 5.

And in the ſame manner is the dignity of the Noble and primary County Palatine of Cheſter at the ſame time granted to the Prince, ſibi & hæredibus ſuis Regibus Angliæ.

Vide Cartã E. 3. *dat. apud Pontem fract.* 18 *Martii.* 7 E. 3. & Hil. 33 E. 3 *irrotulat' in Scaccario ex parte Remembrator' Theſaur'.* Rot. 15. the Black Prince created Earl being three years old.

* Ob quamplurimos exceſſus more hoſtili vexillo diſplicato per Gilbertum de Clare Comitem Glouc' Hertf. & homines ſuos de Morgannon illatos contra Humfredum de Bohun Comitem Heref' & Eſſex & homines ſuos de Brekenock, dominus rex aſſignavit † Epiſcopum Eliens' & alios Commiſſionar' ad inquirendum, &c. Mandavit etiam dominus rex per literas ſuas dilectis & fidelibus ſuis Johanni Haſtings, Johanni fil' Reginaldi, Edmundo de Mortuo mari, Rogero de Mortuo mari, Theobaldo de Verdon, Johanni Tregoſe & Galfrido de Cannil, quod interſint apud Brekenock, &c. Et poſtea venerunt apud Laundon. Voluit idem dominus Rex pro ſtatu & jure ſuo per ipſos Juſticiarios quod inde rei veritas inquiretur per ſacram' tam magnatum, quam aliorum proborum, & legalium hominum de partibus Walliæ & Com' Glouc' & Heref' per quos, &c. cumſcunque conditionis fuiſſent, ita quod nulli parceretur in hac parte, eo quod res iſta dominum regem & Coronam & dignitatem ſuam tangit, &c. Dictum eſt ex parte domini regis Johanni de Haſtings & omnibus aliis magnatibus ſupra nominatis quod pro ſtatu & jure regni, & pro conſervatione dignitatis Coronæ & pacis ſuæ apponant manum ad librum, ad faciend' id quod eis ex parte domini regis injungeretur: Qui omnes unanimiter reſpondent, quod inauditum eſt quod ipſi vel eorum anteceſſores hactenus in hujuſmodi caſu ad præſtandum aliquod ſacramentum coacti fuer', &c. Ac pluries eiſdem magnatibus ex parte ipſius Regis conjunctim & ſeparatim, libroque eis porrecto, injunctum eſt quod faciant ſacram'; Reſponderunt demum omnes ſingulatim quod nihil inde facerent ſine conſideratione Parium ſuorum. Demum Comes Glouc' fecit finem cum domino rege pro decem millibus Marcarum, & Comes Eſſex pro mille marcis, & uterque eorum committitur Mareſchallo. (Recordum perlongum eſt, & continet tres rotulos.) Etob affinitatem, & conſanguinitatem cum rege perdonantur plurima. Tamen foriſfecerunt libertates ſuas durante vita ipſorum. Et poſt deceſſum eorum, hæredes ſui rehabeant.

* Irrotulatur iſtud Recordum inter Placita de Banco Term' Paſc. An. 14 E. 1.

Inauditum eſt.

But now to take our leave of this Principality of Wales, this is that the Romans called by the name of [a] Britannia ſecunda, and ſometimes [b] Valentia, and by the Britaines themſelves called [c] Cambria. And we will conclude this Treatiſe of Wales, &c. with that which that [d] excellent Hiſtorian ſpeaking of the wars between the Roman and the ancient Britain, ſaith, Nec aliud adverſus [e] validiſſimas gentes pro nobis utilius, quàm quod in comune non conſulunt, rarus ad propulſandum comune periculum conventus; ita dum ſinguli pugnant, univerſi vincuntur.

[a] Ortelius in Carta antiqua Britanniæ.
[b] Humph. Lloyd apud Ortelium in the ſame Geograph.
[c] Idem in Fragm. Britan' Hiſtoriæ.
[d] Tacitus. Vide ſupra pa. 9.
[e] Nota Validiſſimas gentes.

† Commiſſionarii.

[f] See 2 part. Pat. 9 E. 2. m. 3. Ordinat' de conſuetud' North-walliæ & Weſt-walliæ.

[f] Rot. Pat. 9 E. 2. m. 3.

[g] Vid. Lib. Int. Co. fo. 549, 550. Three notable matters concerning Wales. 1. Of the government of Wales before 27 H. 8. 2. Of Lordſhip, Marchers, and their authorities and liberties. 3. The Act of 1 & 2 Ph. & Mar. concerning the ſame.

[g] Lib. Int. Co. fo. 549, 550.

CAP.

CAP. XLIX.

The Preſident and Councell in the North.

This Councell is neither warranted by Act of Parliament, nor by preſcription, but raiſed by King H. 8. by his Commiſſion upon theſe occaſions, and in the manner hereafter expreſſed. After the ſuppreſſion of Monaſteries of the yearly value of two hundred pound or under, which was by Act of Parliament 4 Febr. Anno 27 H. 8. in the beginning of 28 H. 8. there was a great inſurrection of the Lord Huſſey and 20800 perſons in Lincolnſhire pretending it to be for the cauſe of Religion: againſt whom Charles Brandon Duke of Suff. went and appeaſed them. As ſoon as they were appeaſed, a great rebellion for the ſame pretence of 40000 of that County, of whom Sir Robert Aske, was Leader: againſt whom the Duke of Norf. and others went, and diſperſed them. Soon after a great Commotion for the ſame pretence was raiſed in Lancaſhire of men in that County, and in Cumberland, Weſtmerland, and Northumberland: againſt whom the Earl of Derby was imployed, and quieted them. After this Muſgrave Tilly and others to a great multitude did riſe, and aſſaulted Carliſle Caſtle, whom the Duke of Norf. overthrew. Soon after Sir Frances Bigot with a great number of people roſe at Setrington, Pickering, Leigh, and Scarborough in Yorkſhire, whom the Duke of Norf. pacified. And after this the Lord Darcy, Aſk, Conſtable, Bulmer, and others began a new rebellion about Hull in Yorkſhire, whom the Duke of Norf. appeaſed. And all theſe rebellions fell out between the beginning of 28 H. 8. and 30 H. 8.

The King intending the ſuppreſſion of the great Monaſteries, which in effect he brought to paſſe in Anno 31 H. 8. for preventing of future dangers, and keeping thoſe Northern Counties in quiet, in Anno 31 of his reign raiſed a Preſident and Councell there, and gave them beſides two ſeverall powers and authorities under one Great Seal, the one of Oier and Terminer, De quibuſcunque congregationibus & conventiculis illicitis coadunationibus, confœderationibus, Lollardiis, miſpriſionibus, falſis allegantiis, tranſgreſſionibus, riotis, routis, retentionibus, contemptibus, falſitatibus, manutenentiis, oppreſſionibus, violentiis, extortionibus, & aliis malefactis, offenſis, & injuriis quibuſcunque, per quæ pax & tranquillitas ſubditorum noſtrorum in Com' Eborum, Northumberland, Weſtmerland, Durham, & Com' Civitatis Eborum, Kingſton ſuper Hull, & Newcaſtle ſuper Tinam gravetur, &c. ſecundum legem & conſuetudinem regni noſtri Angliæ, vel [a] aliter ſecundum ſanas diſcretiones veſtras audiend' & terminand'. The other authority was, [b] Nec non quaſcunque actiones reales, ſeu de libero tenemento, & perſonales cauſaſque debitorum & demandorum quorumcunque in Com' prædictis, quando ambæ partes vel altera pars ſic paupertate gravata fuer', quod commode jus ſuum ſecundum legem regni noſtri aliter prolequi non poſſit, ſimiliter ſecundum leges & conſuetudines regni noſtri Angliæ, vel aliter ſecundum ſanas diſcretiones veſtras audiend' & terminand'.

Anno 31 H. 8. 6. parte Roberto Landavens' Epiſcopo Præſidenti Concilii, &c. & aliis fact.

But theſe authorities were granted, to the end that Commiſſioners by mediation might quiet controverſies when one of the parties or both were poor, who are ever moſt clamorous. And all the Authority they had was expreſſed in the Patents or Commiſſion under the Great Seal, without any reference to inſtructions, or any inſtructions at all. But afterwards, for that the ſaid Commiſſion was againſt law, † to the end, that their Authority ſhould not be known,

[a] Firſt, It was reſolved by all the Judges of the Court of Common Pleas, Trin. 6 Jac. that this clauſe is againſt law, as the like had been formerly often reſolved. See before Cap. of the Court of Requeſts.

[b] 2. It was then alſo clearly reſolved, that this latter clauſe was againſt law, not only for the cauſe aforeſaid, but alſo for that actions reall and perſonall were not to be heard and determined by Commiſſion, but according to the laws of the Realm. Vid. 2 Eliz. Dier 175.

they procured the firſt inſtitution to be ex diametro altered, viz. that their Commiſſion ſhould not give them any expreſſe authority at all, but wholly did refer their authority to certain inſtructions which they kept themſelves in private, and were not inrolled in any Court, whereunto the ſubject might have reſort. Sed miſera ſervitus eſt, ubi jus eſt vagum, aut incognitum. And thereupon King James being informed hereof by the Judges of the Common Pleas (who had granted prohibitions to the Preſident and Councell) gave order that their inſtructions ſhould be enrolled, to the end that the ſubject might take advice of learned Councell what courſe he might take to enjoy the benefit of the laws of the Realm, his beſt birthright.

This is left out of the print in latter time, but it is in the Parliament Rol, &c.

And it appeareth in the Subſidy in Anno 32 H. 8. cap. 50. that H. 8. raiſed not only this Preſident and Councell, but a Preſident and Councell alſo having like authority in the Weſtern parts, pretending it to be for their eaſe to receive juſtice at their own doors, but they of Cornwall, Devon' &c. deſirous to live under the immediate government of the King, and the Common law oppoſed it. Et ſic Commiſſio illa cito evanuit: which Commiſſion under the Great Seal we have ſeen. See in the ſtatute of 13 El. where the Preſident and Councell of York is mentioned, and no man doubteth, but that there is a Preſident and Councell de facto, but what jurisdiction they have is the queſtion.

13 El. cap. 13. See in the Chapter of the Court of Requeſt, anſwer made to this objection in like caſe.

Thus much (having taken upon us to write) we have clearly and plainly delivered our opinion, and he that ſearcheth the ſecret of hearts, knoweth that we have publiſhed nothing herein or in any other of our works, reluctante conſcientia.

And in reſpect of ſome continuance it hath had, and many decrees made, it were worthy of the wiſedome of a parliament for ſome eſtabliſhment to be had therein.

CAP.

CAP. L.

The Courts and their Juriſdictions within th City of London; And firſt of

The Court of the Huſtings.

For the Antiquity and name of this noble City, you may read in Lambard Inter leges Edovardi Regis, fo. 136. b. Sed utere tuo judicio, nihil enim impedio. * But Ammianus Marcellinus an approved Author above 1200 years ſince, calleth it Vetuſtum oppidum, And Cornelius Tacitus, (who maried the daughter of Lucius Agricola the Roman, and was here with him by the ſpace of ſeven years) affirmeth Quod Londinum tempore Neronis (which is above 1500 years paſt) fuit copia negotiatorum & cõmeatu maxime celebre. To be ſhort, it is Camera regis, Reipublicæ cor, & totius regni Epitome.

Lib. 8. fo. 130. in the caſe of the City of London.
* *For the Antiquity.*
For the Antiquity & Name.

And in ſearching among ſuch Records as we had obſerved, of or concerning this noble City, we have obſerved a Charter in the Saxon tongue made by William the Conqueror in theſe words; pilliam Cyng greet pilliam Biſceop ⁊ Godfrepeſer portgerefan ⁊ ealle þa Burhþaſenþe on Lunden beon, &c. *i.* William the King greeteth William the Biſhop & Godfrey the Portreve, and all the Burgeſſes that in London be, &c.

This is the higheſt Court and of the greateſt celebrity within London. It is holden before the Maior and Sheriffs, of all pleas, reall, mixt, and perſonall. Nota, the rule of the Regiſter is, Quodlibet breve, quod tangit liberum tenementum in London, dirigitur Majori ſive Cuſtodi & Vicecomitibus; & alia brevia tantum Vicecomitibus.

Regiſt. 2. b. F.N.B. 6. f.

This word Huſtings is derived of two Saxon words, viz. Hus which ſignifieth a houſe, or bench, and things, that is, cauſes, or pleas, as much to ſay, as the Bench, or Court of pleas, for Bancus or Bench is taken for a Court, as the Kings Bench, the Common Bench, &c.

Fleta lib. 2. in his Chapter De differentiis Curiarum. Habet rex Curiam ſuam, &c. Et in Civitatibus & Burgis & in Huſtingis London, Lincoln, Winton & Eborum & alibi in libertatibus, &c. Et cap. 48. Habet rex curiam ſuam in Civitatibus, Burgis & locis exemptis, [a] ſicut in Huſtingis London, Winton, Lincolne, Eborum, & apud Shepey, ubi Barones & cives recordum habent, &c. So as neither the name nor the Court is appropriated to London.

Fleta lib. 2. ca. 6. & 28.
[a] F.N.B. 61. g. juris utrum. 62. b. partition. & 199. ex gravi querela. b.

[b] For writs of Error to be brought of any judgement in the Huſtings; See the Regiſter and F.N.B.

[c] Concerning forain Vouchers, and forain pleas, ſee F. N. B. fo. 6. E. et ſtat. de Glouc'. cap. 12.

[b] Regiſt. 130, 131. F.N.B. 23. c.
[c] F.N.B. 6. c. Glouc. cap. 12. 2 part Inſtitutes. 33 E. 3. juriſd. 60. 36 H. 6. 33.

Of Lands holden, no writ doth lye but in London according to the cuſtome. Dier 15 El. 317. Judgment of the outlawries in the Huſtings is not given by the Maior, who is Coroner or his Deputy, but by the Recorder by the cuſtome of this City.

2, 3. ℂ *The two Courts of the Sherifs.*

In Curia Civitatis prædict' coram Vicecom' ſine brevi noſtro ſecundum conſuetudinem ejuſdem Civitatis. If an erroneous judgment be given before the

Regiſt. ubi ſup. F.N.B. 23. a.

Sheriffs the party grieved shall sue a writ of Error, and remove this before the Maior and Sheriffs in the Huskings.

Stephanides cap. de disposition ibis.

For the Antiquity of the Sheriffs and their Courts, Fitz Stephen, who wrote of the government of London in the reign of King Stephen, of this City saith;

Hæc Civitas Urbe Roma, secundum Chronicorum fidem, satis antiquior est, &c. Unde & adhuc antiquis eisdem utuntur legibus communibus institutis; hæc similiter illi regionibus est distincta, habent annuos pro Consulibus Vicecomites, habet Senatoriam dignitatem, & Magistratus minores, &c. ad genera causarum, deliberative, demonstrative, judicialis loca sua fora singula, habet sua diebus statutis Comitia, &c.

Nota.

In Lib. Abbat. de Ramsey. * Tempore H. 1.

In the book of the Abby of Ramsey to a conveyance or concord * without date, made in the Court of the Huskings of London of a certain house in Walbroc within the City, between Wilcnothus de Walbroc, and Renaldum Abbatem de Ramsey, the witnesses were (amongst others) Willielmus de Einsford Vicecomes de London, & Johannes Subvicecomes ejus, & Gervasius Clericus ejus. More might be said hereof, but it is clear, that so long as this City hath been a County of it self, so long there have been Sheriffs, for it cannot be a County without Sheriffs There are within the wals of this City 97. Parishes, and out of the wals 16. Parishes; standing partly within the Liberties of the City, and part without in Midd. and Surry.

4. ¶ *The Court of Equity before the Lord Mayor, commonly called, The Court of Conscience.*

1 H. 6. 14. Lib. 8. fo. 126. Lib. Int. Rast. Custome 21. & Viller.

The Custome of London is, and hath been time out of mind, that when a man is impleaded before the Sheriffs, the Mayor upon the suggestion of the Defendant may send for the parties and for the record, and examin the parties upon their pleas, and if it be found upon his examination that the Plaintif is satisfied, that he may award that the Plaintif shall be barred: and this was holden by the Court to be a good Custome, but by no Custome he can examine after judgment. Note, a Court of Equity may be had by prescription, but cannot be raised by grant, as hath been said in the Chapter of the Chancery, of the County Palatine of Chester.

5. ℂ *The Court of the Mayor and Aldermen.*

See 43 El. c. 11. In fine. Lib. 4. fol. 64, 65. Fulwoods case. The print is 28 E. 3. cap. 10. but it should be 27 E. 3. cap. 10. And so resolved by Parliament, in 1 H. 4. cap. 15. Altered in the penalty. 17 R. 2. Rot Har. nu. 26. explained. Parliament not to extend to error in judgement.

This is a Court of Record, and consisteth of the Lord Mayor, the Recorder and 23. Aldermen, whereof the two Sheriffs being Aldermen are part.

It is ordained and established that the Mayor, Sheriffs and Aldermen, which have the governance of the City, shall redresse and correct the errors, defaults and misprisions which be used in the City of London, for default of good governance of the Mayor, Sheriffs, & Aldermen, &c. This is declaratory of their former power of governance, and for this cause principally amongst others, this Court was instituted.

In this Court are many Courts, as namely,

6. ℂ *The Court of Orphans.*

F. N. B. 142. g. 32 E. 3. grd. 31. 1 R. 2. ibid. 166. Li. 4. 64. 65. Rot. Par. 1 R. 2. nu. 130.

The Mayor and Aldermen by Custome have the custody of Orphans within the City. And if they commit the custody of the Orphans to another man, he shall have a ravishment of Ward, if the Orphan be taken away.

It is enacted, that the Mayor and Chamberlain of London for the time being, shall

ſhall have the keeping of all the lands and goods of ſuch Orphans as happen within the City, ſaving to the King and other Lords their rights of ſuch as hold of them out of the ſame liberty.

A Recognizance may be acknowledged in this Court before the Mayor and Aldermen to the Chamberlain for Orphans. Lib. 4. fol. 64, 65, Fulwoods caſe.

The Chamberlain is a ſole corporation to him and his ſucceſſors for Orphans: and a recognizance or bond made to him and his ſucceſſors concerning Orphans ſhall by cuſtom goe to his ſucceſſor. Lib. 4. ubi ſup.

The government of Orphans belong to the Mayor and Aldermen, and they have juriſdiction of them, and therefore if any Orphan ſue in the Eccleſiaſticall Court, or elſwhere for a legacy, or duty due to them by the Cuſtome, a Prohibition doth lye. See the Firſt part of the Inſtitutes, Sect. 267. how the goods of a Freeman of London ſhall be divided.

For the Liberties of London, ſee 50 E. 3. fo. 143.

An Act was made in 7 H. 4. cap. 9. much prejudiciall to the liberties of this City, which is in print, and it was repealed in 9 H. 4. nu. 30. which is not printed. 7 H. 4. cap. 9. Rot. Par. 9 H. 4. nu. 30.

It would aske a Treatiſe by it ſelf to handle at large the other authorities and powers of the Mayor and Aldermen in the Court of Aldermen, and of the other Courts within this City, which we will run over as briefly as we can. And the rather, for that in my Books of Reports I have publiſhed many caſes concerning the Courts, Cuſtomes, Liberties, Franchiſes, and Priviledges of this City, and alſo in the Firſt part of the Inſtitutes, and in this and other parts thereof. Lib. 2. fol. 57. Lib. 4. fol. 18. 14. 64. 65. & 113. Lib. 5. fo. 63. 64. 73. 83. 107. Lib. 8. fol. 122. 125. 126. 127. Vide 129. Lib. 11. fol. 53. & 194. James Bagges his caſe. See the firſt part of the Inſtitutes fol. 176. b. Sect. 267. See the ſecond part of the Inſtitutes, Mag. Cart cap. 9.

7. ¶ *The Court of Common Councell.*

This Court hath ſome reſemblance of the high Court of Parliament, for it conſiſteth of two houſes, viz. the one of the Mayor and Aldermen, and the other of ſuch as be of the Comon aſſembly reſembling the whole Comminalty of London. In this Court they may make conſtitutions and lawes for advancement of trade and traffick: for the better execution of the laws and ſtatutes of the Realme, or pro bono publico, and for the good government of the city. So as theſe conſtitutions & laws be not contrary to the laws and ſtatutes of the Realm. And this being made by the Mayor, Aldermen, and Commingity, do bind within this City and the Liberties thereof. They of the Common aſſembly do give their aſſent by holding up their hands. Lib. 5. fo. 62 63. the Chamberlains caſe. Lib. 8. fo. 123. 125. Le caſe del City de Londres.

8. ¶ *The Court of the Ward-mote.*

Wardmote is derived from Ward and Mote, that is, the Ward Court. In London the Pariſhes are as Towns, and the Wards are as Hundreds, and therefore Riens diens Gard was a good challenge at the Common law. 7 H. 6. 36. 38. 7 H. 7. 4.

In this City there are 26 Wards divided for the government of them amongſt the 24 Aldermen of the City. This Wardmote inqueſt, conſiſting of 12 or more of every Ward, ſhall enquire of ſuch perſons as have not paved or amended their parts and portions of the Streets and Lanes within the ſaid City, &c. 32 H. 8. cap. 17.

9. ¶ *The Court of Hall-mote.*

This is derived of Hall and Mote, as much to ſay as the Hall Court, *i.* Conventus Civium in Aulam publicam, every Company of London having an Hall wherein they keep their Courts, and this Court anciently called Hall-mote or Folke-mote.

¶ *The*

10. ¶ *The Court of the Chamberlaine for Apprentices.*

Lib 8 fo. 129. the caſe of the City of London.

This Court concerning the making free of Apprentices. One may be free of London three manner of wayes, viz. by Service, as here in Caſe of Apprentices: 2. By Birthright, the ſonne of a Freeman: and 3. By Redemption, by order of the Court of Aldermen.

a Rot. Par. 7 R. 2. nu. 37. Vid. inf. 252, 253. * Nota hoc. 8 H. 7. 4. b. Dier 22. Eliz. 373 7 H. 6. 1. 21 H. 7. 16, 17. Pl. Com. 36. b. 28. 47. 59. Lib. 8. fo. 129.

Now to treat of the great and notable Franchiſes, Liberties, and Cuſtomes of the City of London, would require a whole Volume of it ſelf. But there is a moſt beneficiall ſtatute made for the ſtrengthning and preſervation of the ſame, which I know no other Corporation hath. [a] It is enacted that the Citizens of London ſhall enjoy all their whole liberties whatſoever with this Clauſe, Licet uſi non fuerunt vel abuſi fuerunt, and notwithſtanding any * Statute to the contrary, &c. Lege ſtatutum, for by this Act the City may claim liberties by preſcription, Charter, or Parliament, notwithſtanding any ſtatute made before 7 R. 2. And this is the ſtatute mentioned in our Books.

11. ¶ *The Court of the conſervation of the Water and River of Thames &c.*

4 H. 7. cap. 15.

The Maior of London for the time being hath the conſervation and rule of the Water and River of the Thames, and the iſſues, breaches, and lands overflown, &c. from the Bridges of Staines unto the water of Yendall and Yedwey, and authority as touching punition for uſing unlawfull Nets, and other unlawfull Engines in fiſhing, and to all correction and puniſhment there concerning unlawfull Nets and Engins there. In all Commiſſions touching the water of Lee, the Maior of London ſhall be one. See hereafter Cap. Commiſſion of Sewers

Rot. Parl. 2 H. 5. nu. 15.

Rot. Parl. 2 H. 5. nu. 16.

3. Jac. cap. 14.

the ſtatute of 3 Jac. cap. 14. that Sewers that fall into the Thames ſhall be ſubject to the Commiſſion of Sewers.

12. ¶ *The Court of the Coroner in Lond.*

The Mayor is Coroner within the City of London, and the Court of the Coroner is holden before him or his Deputy. Vide poſtea in the Chapter of the Coroner.

13. ¶ *The Court of the Eſcheator in London.*

The Lord Mayor is alſo Eſcheator within the City, and this Court is holden before him or his Deputy. See before in the Chapter of Eſcheator.

14. ¶ *The Court of Policies and of Aſſurances in London.*

43 Eliz. cap. 12.

This Court ſitteth by force of the Commiſſion under the Great Seal warranted by Act of Parliament An. 43 Eliz. cap. 12. there being an Officer or Clerk to regiſter aſſurances, the juriſdiction of which Court you may reade in that Act of Parliament made to encourage Merchants to trade and traffick, the benefit whereof appeareth there, and is too long to be recited, and the rather for that we can adde nothing to that Act of Parliament.

The

15. ¶ *The Court of the Tower of London.*

This Court is holden within the Virge of London before the Steward there by preſcription of debt, treſpaſſe and other Actions of any ſumme greater or leſſer, whereof you may read in 4 E. 4. fo. 36. a, b. 4 E. 4. 36. a, b.

Note, where it is ſaid, that the Tower of London is within the City of London, it is thus to be underſtood, that the ancient Wall of London (the mention whereof yet appeareth) extendeth through the Tower, and all that which is invironed with the ſaid wall, viz. on the Weſt part thereof, is within the City of London, that is to ſay, in the Pariſh of All-Saints Barking within the Ward of the Tower of London. And the reſidue of the Tower of London, on the Eaſt part of that ancient wall is within the County of Middleſex. And this upon view and examination was found out, Mic. 13 Jac. Regis, in the caſe of Sir Thomas Overbury, who was poyſoned in a Chamber in the Tower on the weſt part of that old wall. And therefore Weſton the principall murderer was tried before Commiſſioners of Oier and Terminer in London, and ſo was Sir Gervaſe Elvice Lieutenant of the Tower, as acceſſary.

16. ¶ *Of the Iuriſdiction and authority of the Preſident, Cenſors, and Comminalty of the Colledge of Phyſicians ſcituate in Knight-Riderſtreet in the Ward of Caſtle Barnard within the City of London and 7 miles compaſſe.*

Of this Colledge, and of their jurisdiction and authority, ſufficient hath been ſaid in the 8 Book of Reports in Doctor Bonhams caſe, whereunto we refer the ſtudious Reader. Hereunto we will adde for the ſafety of Phyſicians, eſpecially of the Kings Phyſitians a Record worthy of obſervation. Lib. 8. fo. 107. &c. Dr. Bonhams caſe

* Rex adverſa valetudine laborans de aſſenſu concilii ſui aſſignavit Johannem Arundel, Johannem Saceby, & W. Hatcliffe Medicos : Robertum Warren & Johannem Marſhall Chirurgos ad libere miniſtrandum & exequendum in & circa perſonam ſuam ; Imprimis, *viz.* quod licite valeant moderare ſibi diætam ſuam & quod poſſint miniſtrare Potiones, Syrupos, Confectiones, Laxitivas medicinas, Clyſteria, Suppoſitoria, Caput purgea, Gargariſmata Lealnen, epithimota, fomentationes, embrocationes, capitis raſuram, unctiones, emplaſtra, cerera ventoſ. cum ſcarificatione vel ſine, emorodorum provocationes, &c. Dantes ſingulis in mandatis quod in executione præmiſſorum ſint intendentes, &c. See the ſtatutes of 3 H. 8. c. 6. & 11. 14 H. 8. cap. 5. 1 Mar. cap. 9. 32 H. 8. ca. 40. 42. 34 H. 8. cap. 8. * Rot. Pat. 32 H. 6 m. 17. by what Warrant Phyſick is to be given to the King.

Upon this, Four things are to be obſerved. Firſt, that no Phyſick ought to be given to the King without good warrant. 2. That this Warrant ought to be made by the advice of his Councell. 3. They ought to miniſter no other Phyſick then that which is ſet down in writing. 4. That they may uſe the aid of thoſe Chirurgions named in the Warrant, but of no Apothecary ; but to prepare and do all things themſelves, &c. And the reaſon of all this is the precious regard had of the health and ſafety of the King, which is the head of the Common-wealth.* The Science of Phyſick containeth the knowledge of Chirurgery. * 32 H. 8. cap. 42.

If one that is of the myſterie of a Phyſician take a man in cure and giveth him ſuch phyſick as within three dayes he dye thereof, without any felonious intent, and againſt his will, it is no Homicide. 3 E. 3. coron. 163.

But Britton ſaith that if one that is not of the myſterie of a Phyſitian or Chirurgion, take upon him the cure of a man and he dieth of the Potion or Medicine, this is (ſaith he) covert felony. Britton cap. 5. De homicides.

Phyſitians and Chirurgions ſoient Sages en lour faculties, eyent ſanes les conſciences, cy que rien ne ent failli a faire cure, ſilz ne ſcavoient a bone chefe mitter, ou ſilz a bone chefe ſcavoient & ſentre mettent nequidant follement ou negligentment Mirror cap. 4. § De homicide Verb. [*daut' part.*]

negligentment iſſint que ilz mittont froide pur chaude ou le revers, ou trope peu de cure, ou nemi mitter un due diligence, & noſmement in arſons & abſciſſions que ſont defend'a fare forſq; al peril des meſters ſi lour patients moreront ou perdent memorie, in tiels caſes ſont ils homicides ou mayhemers.

And thus much concerning Phyſitians.

For Courts holden in other Cities, Towns Corporate, and Burghs, our purpoſe is not, to treat of them, becauſe they are private and ſufficiently known; but let us ſay ſomewhat of the liberties, franchiſes, and immunities of this noble City.

Parl. 17 R. 2. nu. 26. **It is enacted, that the ſtatute of** 28 E. 3. cap. 10. **ſhall not extend to any erroneous judgement given or to be given in the City of London.**

See after, cap. 54. **the ancient office of garbling of ſpices, &c.**

Regiſt. 267. b. **There is a Writ in the Regiſter neceſſary to be put in execution for the wholſomeneſſe of aire in London, and in all other Cities, &c.** De vicis & venellis mundandis.

Lourgulary or Lourglary **is an offence when any caſt any corrupt thing appoyſoning the water in or about London, compounded of theſe two words** Lour **corruption, and** Laron a **Theefe or Felon, as** * **Burglary: and if any dye by reaſon of any ſuch offence within a year after, it is felony, and extendeth to all other Cities, Burghs, &c.**

* See the third part of the Inſtit. Cap. Burglary or Burgulary.

It was petitioned to the King, that no man in Cities, Towns, or elſwhere, do carry Paces of ſilver, but onely the Kings Serjeants at Armes, but that they carry Paces of Copper and of no other metall. Whereunto the King anſwered, [The ſame ſhall be ſo, except the Serjeants of the City of London, who may carry their Paces of ſilver within the liberties of London before the Mayor in the preſence of the King.]

V. Cartam H. 1. De liber. London. Omnes homines London ſint quieti & liberi, & omnes res eorum per totam Angliam, & per portus maris de theolonio & paſſagio, & ab omnibus aliis conſuetudinibus.

11 H. 3. 18 Febr. ſpeciall and rare Liberties granted to the City of London. **In the Charter of** H. 3. **bearing** Teſte 18 Febr. Anno regni ſui 11. **the King granted to the City of London** Vicecomitatum London & Midd. &c. **And in that Charter this ſpeciall franchiſe and privilege is granted to the Sheriffes of London and Middleſex for the time being in theſe words.** Ita ſcilicet quod ſi illi qui pro tempore fuerint Vicecomites conſtituti aliquod delictũ fecerint, unde miſericordiã pecuniæ debeant incurrere, non judicentur ad plus niſi ad miſericordiã vigint' libr', & hoc ſine damno aliorum civium ſi vicecomit' non ſufficiant' ad miſericordiarũ ſuarũ ſolutionẽ. Si verò aliquod delictũ fecerint, per quod periculum vitæ vel membrorum incurrere debeant, judicentur ſicut judicari debent per legem civitatis: De hiis autem quæ ad prædictum vicecomitatũ pertinent reſpondeant vicecomites ad Scaccarium noſtrum coram Iuſticiariis noſtris. Salvis eiſdem vicecomitibus libertatibus quas alii cives London habent.

Anno 11 H. 3. 16 Martii. Duellum. **In the Charter of the ſame King bearing date** 16 Martii Anno regni ſui undecimo ſupradicto, **the King granted to the City of London,** Quod nullus civis civitat' prædict' faciat duellum, & quod de placitis ad coronam pertinent' ſe poſſint diſrationare ſecundũ antiquam conſuetudinem civitatis, & quod infra muros civitatis, neque in porteſokne nemo capiat hoſpitium per vim vel per liberationem Mareſchal', &c. & ſi quis in aliqua terrarum noſtrarum citra mare, vel ultra, ſive in portubus maris citra mare, vel ultra, theolonium vel aliquam aliam conſuetudinem ab hominibus London ceperit poſtquam ipſe à recto defecerit, Vic' London namium inde apud London capiant.

Hoſpitium. Per liberationem Mareſchalli.

Anno 11 H. 3. 18 Auguſti. **In another Charter of the ſame King bearing date** 18 Auguſti Anno 11 ſupradict' **the King did diſafforeſt and diſwarren the Foreſt and Warren of Stanes in the County of Middleſex.**

Anno 52 H. 3. 26 Martii. De placitis ad coronam. **And by another Charter of the ſame King bearing date** 26 Martii Anno regni ſui 52, **the King granted to the Citizens of London in theſe words,** Conceſſimus eiſdem civibus quod de placitis ad coronam pertinent', & hiis maximè, quæ infra civitatem prædictam & ejus ſuburbium fieri contingent, ſe poſſint diſrationare ſecundum

ſecundum antiquam conſuetudinem civitatis prædict', eo tamen excepto, quod ſuper tumulos mortuorum de eo quod dicitur eſſent mortui ſi viverent non liceat præciſe jurare ſz. loco mortuorum qui ante obitum ſuum electi fuerint ad eos diſrationandos qui de rebus ad coronam ſpectantibus appellati fuerint, vel rectati alii liberi & legales eligantur qui idem ſine dilatione faciant quod per defunctos memoratos, ſi venirent fieri operteret, Et quod tam forinſeci quam alii attornatos facere poſſint in Huſtingo London tam agendo quam defendendo in curia noſtra.

Super tumu'os.

Attornati in Huſtingo.

The Citizens or Burgeſſes of London were before and after the Conqueſt governed by Portgraves or Portgreves **untill the reigne of** R. 1. **by whoſe Charter they were governed by two Bailiffs : and yet King** Richard **in the firſt year of his reign appointed them a Mayor, who continued therein untill the Eighth year of King** John, **and then King** John **appointed a Mayor. And foraſmuch as ſometimes the Mayor appointed by the King was no Citizen of London, King** John **in the Tenth year of his reign granted to the Citizens liberty and authority to chooſe de ſeipſis a Mayor, &c. And ſo it continueth unto this day.**

An 10 Johannis.

Mayor de ſeipſis.

The Aldermen of London were changed by election every year untill 28 E. 3. **Then it was ordered they ſhould not be removed without ſome ſpeciall cauſe. But** Rot. Parl. 17 R. 2. nu. 25. **it is enacted, that the Aldermen of London ſhall not from henceforth be yearly choſen, but remain till they be put out for reaſonable cauſe, notwithſtanding the Ordinances of** E. 2. and E. 3. **and ſo it ſtill continueth.**

Aldermen.

Rot. Parl. 17 R. 2. nu. 25. enacted.

Rot. Pat. Anno 1 E. 3. **the King granted that the Citizens of London ſhould not be conſtrained to go out of the City of London to any war : and the liberties of this City ſhall not for any cauſe be taken into the Kings hands.** Rot. Parl. 1 E. 3. Authoritate Parliamenti.

Warre.

Liberties not to be taken into the Kings han's.

See hereafter Cap. of Foreſts, pag. Cart' H. 1. **for their recreation by hunting, &c.**

Albeit by the ſtatute of Magna Carta **and other Acts of Parliament, the liberties, privileges, and franchiſes of the City of London be confirmed : yet the moſt beneficiall of them all is that of** * 7 R. 2. **before mentioned : whereby it is enacted, that the Citizens of London ſhall enjoy the ſame, with this clauſe,** Licet uſi non fuerint vel abuſi fuerint, [a] **and notwithſtanding any ſtatute to the contrary.**

Mag. Cart. cap. 9. Rot. Par. 11 H. 3. Rot. Parl. 5 R. 2. nu. 19. 50 E. 3. nu. 143. * Rot. Par. 7 R. 2. nu. 37. Vid. ſup. pag. 250. [a] Nota hoc.

Theſe notable, rare, and ſpeciall liberties and privileges we have attempted to remember : but whether herein we have done that good to the City that we intended, we know not, for we have omitted many more of no ſmall number of great rarity and conſequence, too long here to be recited.

See before pag. 125. Breve de liſtis & barris pro duello fac. Vid. Rot. Cart. 18 Februarii 11 H. 3. **againſt the exaction of the Lieutenant of the Tower of Kidelles, &c.** 2 part of the Inſtitutes Mag. Cart. cap. 23.

The Court of the Juſtices aſsigned for the Government of the Jewes.

Iuſticiarii ad cuſtodiam Iudæorum aſsignati.

Inter leges Edwardi, Lamb. Cap. 29. fo. 133. b.

OMnes Judæi ubicunq; in regno ſunt, ſub tutela & defenſione Regis ligea debent eſſe, nec quilibet eorum alicui diviti ſe poteſt ſubdere ſine Regis licentia: Judæi enim & omnia ſua regis ſunt. Quod ſi quiſpiam detinuerit eos, vel pecuniam eorum, perquirat Rex, ſi vult, tanquam ſuum proprium.

Rot. Pat. 41 H. 3. m. 4. nu. 6.

Theſe Juſtices did hold a Court concerning the cuſtody and government of the Jewes, as (amongſt many other Records) it appeareth Rot. Pat. An. 41 H. 3. m. 4. nu. 6. **And that then** Philip Baſſet, Philip Luvell, Henry de Bathon, **and** Simon Paſſel, &c. **were then Juſtices** ad Cuſtodiam Judæorum aſſignat'. **But when the Jewes were utterly (as hath been ſaid) baniſhed, this Court ceaſed, which was in** 18 E. 1. Anno Domini 1293. **See the** Second part of the Inſtitutes Stat. de Judaiſmo, Rot. Clauſ. 18 E. 1. Memb. 6. **See** Tho. Walſ. in Hypodigmate Neuſtriæ 18 E. 1.

The Courts of Stainclife and Frendles Wapentakes.

3 H. 5. cap. 2.
9 H. 6. cap. 10.

BEcauſe I finde mention made in Acts of Parliament of the Courts of Stainclife and Frendles Wapentakes, &c. I thought good to refer you to thoſe Acts.

CAP.

CAP. LI.

Of the City of VVeſtminſter.

IT hath his name of the Monaſtery, which Minſter ſignifieth, and it is called Weſtminſter in reſpect of the Eaſtminſter not far from the Tower of London.

This Weſtminſter Sebert the firſt King of the Eaſt Saxons that was Chriſtened, founded; and he founded alſo the Univerſity of Cambridge, as works and witneſſes of his Chriſtianity. Sebert began his reign Anno Dñi. 603.

But leaving theſe, and others of like nature, to others, not lying properly in my way; let us turn our eye to ſuch particular juriſdiction as within this City is exerciſed. For the better underſtanding whereof, it is to be known that within this City there are Twelve ſeverall wards, out of which there are elected one Burgeſſe and one Aſſiſtant in every ſeverall Ward; and out of theſe twelve, two are elected yearly in the Thurſday in the Eaſter week for Chief Burgeſſes to continue for one whole year following. To theſe Burgeſſes authority is given by Act of Parliament in the 27 year of the reign of Queen Eliz. (not printed) to hear, examine, determine, and puniſh according to the laws of the Realm and lawfull cuſtomes of the City of London, matters of incontinency, common ſcolds, Inmiates, and common annoyances, and likewiſe to commit ſuch perſons as ſhall offend againſt the peace, and thereof to give knowledge within 24 hours to ſome Juſtice of Peace within the County of Midd. This Act was at the firſt but a probationer, but is continued to this day.

One thing concerning this ancient Monaſtery is obſervable, that after the High Court of Parliament was divided into two ſeverall houſes (whereof we have ſaid ſomewhat in the Chapter of the High Court of Parliament) the accuſtomed place of that thrice worthy Aſſembly of the Knights, Citizens, and Burgeſſes of Parliament (when the Parliament was holden in Weſtminſter) was in the Chapter houſe of the Abbot of Weſtminſter, there to debate and conſult De arduis & urgentibus negotiis regni, & ſtatum regni & Eccleſiæ Anglicanæ concernentibus, &c. And this continued untill the ſtatute of 1 E. 6. c. 14. which gave to the King Colledges, free Chappels, Chaunteries, and whereby the King enjoyed the ancient and beautifull free Chappell of S. Stephens, founded by King Stephen. (which had lands and revenues of the old yearly value, of 1085 l. 10 s. 5 d.) Since which time the Chappell thereof hath ſerved for the Houſe of Commons when Parliaments have been holden at Weſtminſter. See before in the Chapter of the High Court of Parliament. Rot. Parl. Anno 50 E. 3. nu. 8.

Radulphus de Ingham Chief Juſtice of England, (a very poor man being fined before him at 13 s. 4 d.) in another tearm, moved with pity cauſed the Record to be raſed and made 6 s. 8 d. for which he (for his fine) made the Clock (to be heard into Weſtminſter Hall) and the Clockhouſe in Weſtminſter, which coſt him 800. marks, and continueth unto this day, which ſum was entred into the Roll. And almoſt in the like caſe in the reign of Queen Elizabeth, Sir Robert Catlyn Chief Juſtice of England would have had Juſtice Southcote (one of his companions Juſtice of the Kings Bench) to have altered a Record, which the Juſtice denyed to doe, and ſaid openly in Court, that he meant not to build a Clockhouſe. Tempore E. 1. Vid. 2 R. 3. f. 10. 2.

This Monaſtery in Anno 30 H. 8. was ſurrendred to the King, who erected thereof a Dean and Chapter. Anno 33 H. 8. it was raiſed to a Biſhoprick, and Thomas Thurlby made thereof the firſt and laſt Biſhop, &c. Queen Eliz. made it a Colledge conſiſting of a Dean, twelve Prebends, a Schoolmaſter, an Uſher, 40. Scholars, and 12. Almeſmen, and ſo it was named the Collegiate Church of Weſtminſter.

In Anno 37 H. 8. the Kings Manor of Weſtminſter was made an Honor. 37 H. 8. cap. 18.

CAP. LII.

Of the City of Norwich, &c.

In the book of Domesday made by William the Conqueror.

WIthin this City there was in the reign of King Edward the Confessor 1300. Citizens, and then this City paid to the King 20 l. and to the Earl 10 l. And besides these 20 s. and Four Prebendaries and Six Sextaries of hony, a Bear, and Six dogs to bait him. Now it yeeldeth 70 l. to the King, and a 100 s. to the Queen, and a Palfrey, and twenty pound of white rent to the Earl, &c.

The foundation of the Incorporation of this City is very ancient, for in ancient Manuscripts it appeareth that In tempore Steph. Regis de nova fundata & ut Villa populata communitas fact'.

Camden in Britannia.

This City is highly commended for many things, for it is truly said of it, Quod suis opibus, frequentia, ædificiorum elegantia, Templorum pulchritudine & numero, (Parœcias enim plus minus 30. complectitur) Civium sedulitate, in principem fide, in * exteros humanitate, inter celeberrimas Britanniæ urbes merito connumeranda, &c. Mœnibus validis (in quibus crebræ dispositæ turres, & undecim Portæ) undique obsepta, nisi ad Ortum qua flumen (cum sinuoso flexu 4. Pontibus pervium Septentrionalem urbis partem interluerit) profundo alveo & præcipitibus ripis defendit. * It is preferred before all the Cities in England except London. It hath above 30 Parishes, and it is as large within the wals as London. It had within it 6 the Liberties Six Religious houses 1 one Hospitall.

* Urbanitas ab urbe.

For the better establishing of the Ecclesiasticall jurisdiction belonging to the Bishop of Norwich (of which jurisdiction in generall we are to treat hereafter) it shall not be impertinent to set down the true state of this Bishoprick.

In Anno 27 H. 8. and before William Rugge Doctor of Divinity of the Universitie of Cambridge was Abbot of the [a] Monastery of S. Benets de Hulmo in the County of Norf. and the Bishoprick of Norwich becomming void by the death of Richard Nick commonly called the blind Bishop, the King nominated the said Abbot to be Bishop of Norwich. And afterwards the 4. of Febr. Anno 27 H. 8.

* Alex. Nevill.

[a] This Monastery was founded by King Knute & increased by Edw. the Confessor & the Monastery made of that strength as it seemed to be *potius castrum quàm claustrum*. It was of the order of S. Benedict of black Monks.

[b] It was (*amongst other things*) enacted by Authority of Parliament, That such person as should be elected and consecrated Bishop of the said Sea should have and enjoy to him and his successors Bishops of the said Bishoprick of Norwich united and knit to the said Bishoprick the Monastery of S. Benets, and all and singular Manors, Lands, Tenements, &c. belonging to the said Monastery, &c. And that the person which should be named Bishop of Norwich and his successors Bishops of the same Bishoprick from thenceforth [c] should be Abbots of the Monastery of S. Benets, and have the dignities of the said Abbacy united, incorporated, and knit to the Sea of the said Bishop, &c.

[b] Statut. de 27 H. 8. concerning the Bishoprick of Norwich.

[c] The like is not in England.

But perule the statute, and you shall find that Doctor Rugge had beneficium vicecomitis, for the Bishoprick lost much more by that Act then it gained. Afterwards this Doctor was elected and consecrated Bishop of Norwich. And being Patron, in the right of his Bishoprick, of the Hospitall of S. Giles in Norwich, he as Patron, and Nich. Shaxton Master of the said Hospitall by their deed acknowledged and inrolled bearing date 6 Martii. Anno 1 E. 6. did give and grant to King E. 6. his heirs and successors the said Hospitall and the possessions and hereditaments belonging to the same, and all other their possessions and hereditaments

See before in the Chapt. of the royall Franchise of Ely, that King H. 1. of the monastery of Ely made a Bishopr. but King H. 1. had therein one end, and King H. 8. another.

hereditaments in the ſaid County of Norf. Certain Concealors (Templorum helluones) by pretext and colour of the ſaid generall words paſſed the poſſeſſions and hereditaments of the ſaid Monaſtery of S. Benners de Hulmo in a book of concealments under certain obſcure words) which appear in the Act of Parliament hereafter mentioned) by Letters Patents of concealment bearing date the 2 day of Auguſt, Anno 27 Eliz. and William Redmain Doctor of Divinity, and Biſhop of Norwich cauſed one Hamond a friend of his to take an eſtate to him and his heirs of and from the ſaid Concealors of all or the greateſt part of the ſaid Monaſtery: which I (being then her Majeſties Attorny Generall) underſtanding, and utterly miſliking the proceeding herein, conferred with the ſaid Biſhop about the ſame, and in the end he was brought to agree, that an Act of Parliament ſhould paſſe for the eſtabliſhment of the ſaid Biſhoprick and of the poſſeſſions thereof, which Act (wherewith I was well acquainted) paſſed at the Parliament holden in Anno 39 El. and is in print, which you may read at large, wherein you ſhall obſerve the fraud and falſhood of the Concealors. 39 El. cap. 22.

What attempts theſe Concealors (graceleſſe and wicked men) made to the ſubverſion of the Deanery and Chapter of the Cathedrall Church of Norwich, you may read in the Third book of my Reports. 73. Sed (favente Deo & auſpice Chriſto) iſti helluones non prævaluerunt. Which I have the rather remembred both for the eſtabliſhment of the ſaid Biſhoprick, as for the repoſe and quiet of very many Fermors, Officers, and other perſons claiming intereſts in the ſaid poſſeſſions in my native Country. Lib. 3. fo. 73. the caſe of the Dean and Chapter of Norwich.

And if any queſtion ſhall hereafter be made either concerning any of the poſſeſſions of this Biſhoprick, or any other, or of any Dean and Chapter, or of the Colledges in either of the Univerſities, &c. by any Concealor or other; their poſſeſſions are eſtabliſhed by the Act of Parliament of 21 Jac. cap. 2. intituled, An Act for the generall quiet of the ſubject againſt all pretence of concealment whatſoever. 21 Jac. cap. 2.

For the Courts of Juſtice within this City (which is our principall aime) we have treated of the like before in the City of London. To this we will adde an Act of Parliament concerning the jurisdiction of this City (whereof we have not found the like that we remember in any other) which in effect is as followeth.

It is enacted for the Citizens of Norwich, that if their Cuſtomes and Uſages, heretofore uſed, or hereafter to be uſed, be difficult or defective in part or in all, or that the ſame need any due amendment for any matter ariſing, whereof remedy was not aforetime had, that then the * Bailifs and 24. Citizens of the ſame City, ſo therefore yearly to be choſen, or the greater part of them, ſhall from henceforth have power to ordain and provide from time to time ſuch remedies which are moſt agreeable to faith and reaſon, and for the moſt profit, the good and peaceable government of the ſame town, and of ſtrangers thereto repairing, as to them ſhall ſeem beſt, ſo as ſuch Ordinances be profitable for the King and his people. Par. 2 R. 2. nu. 39. not in print. * It hath now a Mayor and 24 Aldermen. Vide Rot. Cart. Anno 4 H. 4.

It is a County of it ſelfe, and hath two Sheriffs and large liberties without the walls. See the ſtatute of 33 H. 6. cap. 7. how many Attornies ſhould be in this City. See before in the Chapter of the High Court of Parliament concerning new Draperies, &c. and Worſteads &c. made in this City. See Rot. Parl. 18 H. 6. fo. 5. concerning the ancient liberties of this City. 33 H. 6. cap. 7.

* Burgi & Civitates fundat' & ædificat' ſunt ad tuitionem gentiũ, & populorum regni, & idcirco obſervari debent cum omni libertate, integritate & ratione. * Int. Leges Wil. Conq. Lam. 125. Int. Leges Ethelſtani & Canuti fo. 62. & 106. Oppida inſtaurantur, &c.

* 14 H. 4. It is enacted, that the Merchants and Artificers of Worſteads in Norf. may ſell their ſingle Worſteads to any place or perſons being of the Kings amity notwithſtanding any Inhibition or Liberty to the contrary. * Par. 14 H. 4. nu. 47. not in print.

Rot. Par. 11 H. 4. nu. 48. Trin. 13 E. 1. in Banco Rot. 76.

He that desires the tearms, true makings, and quantities of Worsteads: Let him read the statute of 11 H. 4. Rot. Parl. nu. 48.

Trin. 13 E. 1. in Banco, Rot. 76. Inspeximus Cart. H. 3. Civibus Norwic' de libertatibus concess'.

19 E. 3. jurisd. 22. 26 H. 8. cap. 3.

The beautifull Cathedrall or Mother Church of Norwich was begun to be built by Herbert Bishop of Norwich, Anno 9 Willielmi Rufi.

The Bishops of this See had the first fruits of Ecclesiasticall Livings within their Diocesse before the statute of 26 H. 8. ca. 3. which no Bishop, or Archbishop of this Realm had.

It hath also a famous River abounding with Fish, especially the Pearch.

The strong and noble Castle of Norwich called Blanchflower invironed about with the City, but no part thereof but of the County of Norf. was not (as some suppose) built by Bigot Earl of Norf. which some upon view therof have conjectured, for that the Arms of Earl Bigot are graven on the Wals thereof. For we find a Charter of King Stephen in these words. Stephanus Rex Anglorum Archiepiscopis, Episcopis, Abbat', Justic', Comitibus, Baronibus, Vicecomitibus, Ministris, & omnibus fidelibus suis Angliæ, Salutem. Sciatis me dedisse in feodo & hæreditate * Willielmo Comiti Warren filio meo Castellum Norwici cum toto Burgo, &c.

* This William married Isabel daughter and heir of William Earl Warren, and in her right was Earl Warren. Vid. Mat. Par. pag. 92.

And Rase de Waet Earl of Norwich defended this Castle of Norwich against William the Conqueror, who was driven out of England, and travelled with his wife to Jerusalem.

But true it is that Earl Bigot being after owner thereof, did both repair and enlarge the same, and set his Arms upon the wals thereof. And so much for the Antiquity (a great Ornament of this City) of this Castle, which now for want of reparation is ready to fall.

To conclude, This famous and free City is justly to be commended for profession of true Religion, their Loialty to their Prince in all times of tumult, the good government of themselves, and the exercise of works of Charity.

This is the chief City of my Native Country.

Nescio qua natale solum dulcedine cunctos
Ducit, & immemores non sinit esse sui.

CAP.

CAP. LIII.

The Court of the Tourne.

WWe have ſpoken of this Court (being a Court of Record) in the Second part of the Inſtitutes, Mag. Cart. cap. 35. whereunto we will adde a Charter of William the Conqueror, which we finde inrolled 2 R. 2. nu. 5. pro Decano & capitulo Eccleſiæ beatæ Mariæ de Lincoln'.

2. part of the Init. Mag. Cart. Ca. 35. 12 H. 7. 18. Fineux. Rot. Pat. 2 R. 2. nu. 5.

Willielmus gratia dei Rex Anglorum, Comitibus, Vicecomitibus, & omnibus Francigenis, & qui in Epiſcopatu * Remigii Epiſcopi terras habent, Salutem. Sciatis vos omnes, & cæteri mei fideles qui in Anglia manent, quod Epiſcopales leges quæ non bene, nec ſecundum ſanctorum Canonum præcepta uſque ad mea tempora in regno Anglorum fuerant, communi Concilio & Concilio Archiepiſcoporum meorum & cæterorum Epiſcoporum & Abbatum & omnium Principum regni mei emendendas judicavi. Propterea mando, & regia authoritate præcipio, ut nullus Epiſcopus vel Archdiaconus de legibus Epiſcopalibus amplius in * Hundretto Placita teneant, nec cauſam quæ ad regimen animarum pertinet ad judicium ſæcularium hominum adducant, ſed quicunque ſecundum Epiſcopales leges de quacunque cauſa vel culpa interpellatus fuerit, ad locum quem ad hoc Epiſcopus elegerit, & nominaverit, veniat, ibique de cauſa ſua reſpondeat, & non ſecundum * Hundrettum, ſed ſecundum Canones & Epiſcopales leges rectum deo & Epiſcopo ſuo faciat. Si vero aliquis per ſuperbiam elatus ad Juſtitiam Epiſcopalem venire non voluerit, vocetur ſemel, & ſecundo, & tertio; quod ſi nec ſic ad emendationem venerit, excommunicetur: et, ſi opus fuerit, ad hoc vindicand', fortitudo, & Juſtitia regis vel Vicecomitis adhibeatur: Ille autem qui vocatus ad Juſtitiam Epiſcopi venire noluit, pro unaquaque vocatione legem Epiſcopalem emendabit: hoc etiam defendo, & mea authoritate interdico, ne ullus Vicecom aut præpoſitus, aut miniſter regis, nec aliquis laicus homo de legibus quæ ad Epiſcopum pertinent ſe intromittat: nec aliquis laicus homo alium hominem ſine Juſticia Epiſcopi ad judicium adducat; Judicium vero in nullo loco portetur niſi in Epiſcopali ſede, aut in illo loco quem ad hoc Epiſcopus conſtituerit.

* i. In Turno.

* This is not intended of the Hundred Court but that in thoſe times the Sheriff did hold his Tourn *per Hundreda*. See Mag. Cart. cap. 35. and the Expoſition thereupon.

For the confirmation of this Charter, ſee in the Regiſter of the Biſhop of London. Willielmus dei gratia Rex Anglorum R. Bainardo, & S. de magna Villa, P. de Vabines, cæteriſque meis fidelibus de Eſſex & de Hertfordſhire, & de Middleſex, Salutem. Sciatis vos omnes, &c. Tenor iſtius Cartæ eſt in Anglico de verbo in verbum in eadem Carta. Conſimilis Carta ut ante ex libro Cartarum Archiepiſcopi Cantuar'. **Againſt this Charter it is objected. Firſt, the time of the enrolling thereof,** viz. **in 2 R. 2. being never heard of before. Secondly, out of the red book,** Inter leges H. 1. cap. 8. de generalibus Placitis Comitatuum. *i.* **as well of the Tourn, as of the County Court.**

[a] Lib. rubeus in Cuſtodia Remem. Regis compoſitus tempore H. 1. cap. 8. Read the whole Chapter. Vide ib. Cap. 12.

[a] Sicut antiqua fuerit inſtitutione firmatum, ſalutari regis imperio, vera nuper eſt [b] recordatione firmatum, generalia Comitatuum Placita certis locis & vicibus & definito tempore per ſingulas Angliæ provincias convenire debere, nec ullis ultra fatigationibus agitari, niſi propria regis neceſſitas, vel commune regni commodum ſæpius adjiciant. Interſint autem Epiſcopi, Comites, Vicedomini, Vicarii, Centenarii, Aldermanni, præfecti, præpoſiti, Barones, Vavaſſores, Tungrevii

[b] Int. Leges Edw. Lamb. 135.

Vid. Stat. de Marlbr. cap. 10.

grevii & cateri terrarum domini diligenter intendentes ne malorum impunitas, aut Gravionum pravitas, vel judicum subversio solita miseros laceratione confiniant. Agantur itaque primo debita veræ [a] Christianitatis jura; Secundo [b] regis placita; Postremo [c] causæ singulorum dignis satisfactionibus expleantur. **Whereupon they conclude, that Ecclesiasticall causes were handled in the Tourn in the reign of** H. 1. **long after the said supposed Charter. And certain it is that the Bishops Consistories were erected, and causes Ecclesiasticall removed from the Tourn to the Consistory after the making of the said Red Book:** Ideo penes Lectorem sit judicium.

[a] Ecclesiasticall causes.
[b] Pleas of the Crown in the Tourn.
[c] Private causes in the County Court.

In the same Chapter of the said Red Book it is further said, Et quoscunque [d] Shiresgemote discordantes inveniet, vel amore congreget, vel sequestret judicio: debet enim Shiresgemot [e] bis, hundreda & wapentachia [f] duodecies in anno congregari.

[d] *Turnum* as it is here taken.
[e] And so is the Turn holden to this day. Mag. Cart. 35.
[f] And so is the County Court holden at this day Mag. Cart. 35. 2 E. 6. 25. & 22 E. 4. 22.

The Tourn is a Court of Record holden before the Sheriff: the ancient Institution thereof was before Magna Carta [g] **to hear and determine all felonies (death of man excepted) and common nusances.** [h] **See the Statute of** Magna Carta, cap. 17. **and the Exposition upon the same in the** Second part of the Institutes.

[g] 2 E. 6. 25. & 22 E. 4. 22.
[h] 2. part of the Inst. Mag. Cart. cap. 17.

The stile of this Court is Curia visus Franc. domini regis apud B. Coram Vicecomite in Turno suo, &c. **and not** Turnum Vicecom' tent', &c. **for** Tornum est nisi perambulatio. **The Articles inquirable in the Tourn are known, and need not to be here rehearsed.**

CAP.

CAP. LIV.

The Court of the Leet or view of Frankepledge.

This is a Court of Record, and at the firſt derived and taken out of the Tourn, and is holden before the Steward, and he is Judge thereof. Of the Antiquity and jurisdiction of this Court, you ſhall read in the Second part of the Inſtitutes, Magna Carta cap. 35. And what the ancient jurisdiction of the Leet was, you ſhall alſo read in the Second part of the Inſtitutes, Magna Carta cap. 17. See Mich. 7 E. 2. Rot. 9 Northâpt. Abbas de Burgo. See the 2. part of the Inſt. Mag. Cart. cap. 35.

Lep, Leth, or Leet is a Saxon word, and commeth of the Verb ȝelaþian or ȝeleþian (ȝ being added Euphoniæ gratia) i. convenire, to aſſemble together, unde conventus. Int' Leges Edw. cap. 35.

If a common Nuſans, &c. done within the jurisdiction of the Leet be not preſented in the Leet, the Sheriff in his Tourn cannot enquire of it, for that which is within the precinct of the Leet is exempt from the Tourn, otherwiſe there might be a double charge; but in that caſe a writ may be directed to the Sheriff to enquire thereof, &c. againſt the opinion of Fineux in 12 H. 7. if his opinion be not miſreported. And by the book of 29 E. 3. This writ is not taken away by the ſtatute of 28 E. 3. cap. 9. made the year before, which was then freſh in the Judges memory. 29 E. 3. 21. Wilby. 12 H. 7. 18.

See the Second part of the Inſtitutes, in the Expoſition upon the ſtatute of 31 El. cap. 7. concerning Cottages and Inmates, ſpeciall matter concerning the jurisdiction of the Leet. See for the jurisdiction of the Leet the ſtatute of 2 E. 6. cap. 10. concerning making of Salt.

The Commons petitioned that exceſſive fines ſet on the Kings ſubjects by ſuch as have Leets may be redreſſed, whereunto the King anſwered, The King would the ſame. Rot. Par. 17 E. 3. nu. 38.

See a notable caſe concerning the jurisdiction of the Leet and Court Baron, Mich. 18 E. 1. in Banco Rot. 156. Norf. Et ibi tenetur quod Clericus ad Letam venire non habet neceſſe, niſi ejus præſentia ex certis cauſis & conſiderationibus ſit neceſſaria. Mich. 18 E. 1. in Banco Rot. 156. Norf.

This Court of the Leet may enquire of corrupt Victuall as a common nuſance, whereof ſome have doubted, both for that it is omitted in the ſtatute of the Leet, and of the weak authority of the book of 9 H. 6. where Martyn ſaith, That it is ordained that none ſhould ſell corrupt Victuall. And Cottiſmore held opinion that it is Actio popularis, whereupon it is collected, that the conuſance thereof belongs to the Leet. [a] And Martyn and Neal 11 H. 4. agreeing with him ſaid truly, for by the [b] ſtatute of 51 H. 3. Stat. Pillor' & Trumbrel', & Aſſis' Panis & Cervis', and by the ſtatute made in the reign of E. 1. intituled, Stat. de Piſtoribus & Braſiatoribus & aliis Vitellariis, It is ordained that none ſhall ſell corrupt Victuals. And by the [c] ſtatute of 14 E. 3. it appeareth that this Act was ordained in the time of his Grandfather, which was E. 1. Stat. de viſu Franc. 18 E. 2. 9 H. 6. 53. b.

[a] Vid. 11 E. 4. 6. b. per Neal & Brian. 1 R. 3. 1. a. 7 H. 4. 14, 15. Brook tit. Leet 1.

[b] In the ſtat. at large p. 17. Mag. Carta parte 2. 23, 24.

[c] 14 E. 3. cap. 12.

[d] Britton who wrote after the ſtatute of 51 H. 3. and following the ſame ſaith thus; Puis ſoit inquiſe de ceux queux achatent per un manner, de meaſure & vendent per meinder meaſure faux, & ceux ſont punies come vendors des vines, & auxi ceux que ſerront artaines de faux aunes, & faux poys; Et auxi les * Macegrieves, & les gents que de uſage vendent a treſpaſſants mauvaſe vians corrumpus & wacrus, & autrement perillous a la ſauhty de home. Et les Forſtallers, &c. Et fo. 33. he doth conclude the like paſſage with theſe words, Enconter le forme de nous ſtatutes. [d] Britton f. 77. a.

* *Macellarius*, a Butcher or Victualler.

Fleta lib 2. ca. 1. §. Est etiam. Et cap. 11. §. Itē si dominus.

Est etiam atrox injuria quæ perpetuam inducit infamiam cum pœna Pillorali & Tumbrelli, quæ quandoque fit per Pistores, Brasiatores, & alios qui falsis ponderibus utuntur & mensuris, quæ etiam fit per cibaria corrupta, & semicocta vendentes, &c. But none of these Statutes gave the conusance to survey and correct Victuallers for corrupt Victuall to our Court of the Leet, therefore further Authority therein is desired. Wherein we will produce that which is omni exceptione majus, and that is by resolution in Parliament.

12 E. 4. ca. 8.

By the Statute of 12 E. 4. cap. 8. It is rehearsed, That Mayors, Bailifs, and other like Governors of every City, Borough, and Town of substance within this Realm of England for the most part have Courts of Leets and Views of frankpledge holden yearly within the same, and surveying of all Victuallers there, and correction and punishment of the offenders, and breakers of the Assise of the same, to be presented and amerced if default be found in the said Courts, &c. And where divers persons intending their singular avail and profit, and to oppresse the said Victuallers, and to enter and break the liberty of divers places in this Realm having Franchises (*that is, Leets aforementioned*) and surveying of all Victuallers, and correction of the same, had purchased Letters Patents of King E. 4. to be surveyors and correctors of all such Victuallers within divers Cities, Boroughs, and other places, of Ale, [a] Beere, Wine, and other Victuals, &c. in [b] wrongfull derogation of the Liberties and Franchises of the said Cities, Boroughs, and other places, &c. *as by the said Act is rehearsed.* It is established and ordained, that all Letters Patents granted by that King, or after to be obtained of any office of searching or surveying of Wine, Ale, Beere, or other Victual, shall be utterly void and of none effect. And that no person other then such Governors before rehearsed, &c. (*that is, in respect of their before rehearsed Leets*) shall use or exercise any such office, &c. And besides the declaration of the same to be void and against law, a penalty of 40 l. is inflicted upon such as shall exercise any such office so obtained or after to be obtained. An excellent Act of Parliament both for the declaration of the law in the case aboveſaid, as also that the King by his Letters Patents cannot make any new office for the surveying, correction, &c. of any thing which belong to the Jurisdiction and Conusance of any former Court which by consequent hath a large extent, and therefore we have cited the same the more at large.

Nota.

[a] These words follow after in the Act, and Nota by this it appeareth, that Beer is not of such late time as some suppose. See also Rot. Par. Anno 4 H. 4. nu. 53. Beer and Ale mentioned to be then in Calice. Beer is a Saxon word *Bier*, and Beer is within the word *Cervisia* in the ancient Statutes. For it is but as the putting of a new button to an old Coat. *viz.* Hops to Malt and water, to make it continue the longer. [b] Hereby it appeareth that those Letters Patents were against law, and that this is a Statute declaratory with addition of a penalty.

Some doe hold that it is within the Statute of 18 E. 2. some say as an incident to the Assise of Bread and Ale, and others hold that by that Act power is given to the Lord of the Leet to enquire of that Assise of Bread and Ale, that is to say, of the Statute intituled, The Assise of Bread and Ale, which is the said Act of 51 H. 3. in which Act sellers of corrupt Victuals are to be punished. And therewith (say they) agreeth the book in 2 R. 3. fo. 1. that of corrupt Victuall the Leet had jurisdiction by the Statute, howsoever that is conceived, it is the Leet that hath conusance thereof.

Pasch. 18 E. 2. Coram Rege Rot. 78. Southt.

And albeit Malt, Brasium, be no Victuall of it self, as it is adjudged in Anno 18 E. 2. Quod venditio brasii non est venditio Victualium, nec debet puniri sicut venditio Panis, Vini & Cervisiæ, & hujusmodi contra formam Statuti. Yet because it is the principall ingredient of Beer, and serveth to Victuall the Kings houshold, &c. (as it is said in the Statute of 17 R. 2.) and tendeth, if it be corrupt and not wholsome, to the great hinderance of health and increase of diseases, we will examine how the law standeth therein at this day.

17 R. 2. cap. 4.

Malt

Mealt or Malt is a Saxon word, in Latin we call it Braſium derived of braſſo, i. ebullio, ferveo. In the ancient ſtatutes Braſiator is taken for a Brewer. In Fleta, ubi ſupra, Braſiatrix: in Britton, ubi ſupra, Bracereſſes, for Brewers. In Latin we uſe the word Pandoxator or Potifex: and Braſiator at this day is uſed for a Maltmaker or Malſter.

Malt is made of Barley, and cannot be well and perfectly made, unleſſe it hath the time of 12 dayes in the making thereof, and both in the making thereof in the Fat, floor, ſteeping, and ſufficient drying of the ſaid Malt 3 weeks at the leaſt, except it be in the moneths of June, July, and Auguſt, and in thoſe moneths by the ſpace of 17 dayes at the leaſt. 2 E. 6. cap. 10.

The Maltmaker ought not ſlackly and deceitfully dry the Malt, to the intent to have an inordinate increaſe thereof by ſwelling of the ſame, which being not ſufficiently dried, within a ſhort time will be muſty and full of * Witvels. * Gurguliones.

¶ No perſon ought to put to ſale any Malt which ſhall not be well and ſufficiently troden, rubbed, and well fanned, whereby there may be conveniently fanned out of one Quarter thereof half a peck of duſt, or more. 17 R. 2. cap. 4.

¶ No perſon ſhall mingle any Malt not being well and ſufficiently made, or being made of mow-burnt or ſpired Barly, with other good Malt, and after put the ſame to ſale. All theſe be mala in ſe, and puniſhable by the Common law. 2 E. 6. cap. 10.

And this ſtatute of 2 E. 6. hath added a penalty, if the ſuit be brought upon this ſtatute. And if the Brewer put to ſale any beer, which he hath brewed with unlawfull (as all is unlawfull that have not the qualities foreſaid) and unwholeſome Malt, he may be preſented for the ſame in the Leet, &c. as ſelling of corrupt and unwholſome victuall. And by this ſtatute power is given that the Juſtices of peace in every of their Seſſions, and alſo the Steward in every Leet ſhall hear and determine, as well by preſentment of 12 men, as by accuſation or information of two honeſt witneſſes of, for, and upon all and every the offences and forfeitures in that Act, &c. So as the Juſtices of peace or Stewards in Leets, may either proceed at the Common law or upon this ſtatute. It is further provided by this Act, that the Bailifs and Conſtables of every Borough, and Market towne or other Town where Malt ſhall be made or put to ſell, ſhall from time to time ſearch and ſurvey the ſame; and if the ſame be found to be evill made or mingled with evill Malt, they by the advice of one Juſtice of peace ſhall cauſe the ſame to be ſold at ſuch reaſonable price, and under the common price in the market, as to his diſcretion ſhall ſeem expedient. This Act extends not to the making of any Malt for a mans own proviſion for his own houſe or family. And the offences againſt this Act are to be preſented within a year. 2 E. 6. cap. 10.

This Act of 2 E. 6. cap. 10. is continued, and yet ſtandeth in force. 27 Eliz. cap. 4. 1 Jac. cap. 25, &c. 4 Car. cap. 4.

That which hath been ſaid (de malis in ſe) of Malt, may alſo be applyed to Hops another ingredient into Beer, and puniſhable by the Common law. But againſt divers and many falſehoods practiſed in packing of forein Hops, for that the ſubjects of the Realm have been by reaſon thereof of late years abuſed and deceived unto the value of 20 thouſand pounds yearly at the leaſt (for that in ſacks of forein Hops there is not found one third part to be good and clean Hops, the reſt being droſſe and ſoile,) A good law is made Anno 1 Jac. and every perſon offending therein ſhall forfeit the ſame Hops ſo brought into the Realm. And it is further enacted by the ſame Act, that if any brewer of Beer or Ale ſhall imploy and ſpend any Hops unclean, corrupt, or mixt with any powder, duſt, droſſe, ſand, or any other ſoile whatſoever, he ſhall forfeit the value of thoſe Hops ſo imployed, to be recovered, &c. in any of the Kings Courts of Record. 1 Jac. cap. 18.

The reaſon wherefore theſe Courts of the Tourn and Leet are Courts of Record, and not the Courts of the County, of the Hundred, and of the Court Baron (whereof we ſhall next in order treat) is, for that the Tourn and the Leet are inſtituted for the Common-weal, as for conſervation of the Kings peace, and puniſhment of common nuſances, &c. And for conſervation of the peace, the Sheriffe in the Tourn, and the Steward in the Leet may take Recognizances for F. N. B. 82.

keeping of the peace. But the ſaid inferiour Courts of the County Hundred, and the Court Baron have juriſdiction of private cauſes under the value of 40 s. between party and party.

---Fuit hæc ſapientia quondam
Publica privatis ſecernere, ſacra profanis.

And forasmuch as unclean, corrupted, and mingled Spices and Drugs be ſo unwholſome and hurtfull, as they tend to the jeopardy of mans body, we will hereunto adde the expoſition of the ſtatute of 1 Jac. cap. 19. the penalty of Spices not garbled.

¶ Whereas heretofore great deceits and abuſes have been committed in uttering, ſelling, and putting to ſale, ſundry ſorts of uncleane, corrupt and mingled Spices, &c. garbleable: to the jeopardy of his Majeſties perſon, &c.

¶ Garbleable.] To garble, ſignifieth in our legall underſtanding, to ſever and divide the good and ſufficient from the bad and inſufficient; and extendeth not only to Spices and Drugs mentioned in our ſtatute, but to other wares and merchandizes. As for example. By the ſtatute of 1 R. 3. it is provided that no Bowſtaves ſhall be ſold ungarbled, &c. that is, untill the good and ſufficient be ſevered and divided from the bad and inſufficient: and this garbling of Bows hath reference to the ſtatute of 12 E. 4. cap. 2. where garbling of Bows is well expounded, that is, that the Bowſtaves be ſearched and ſurveyed, &c. and that ſuch as be not good and ſufficient be marked &c. Some think that it is derived from the French Verb, Garber, to make fine, neat, clean. &c. Others fetch it from Cribler and that of Cribrare to ſift or ſever the good from the bad, unde Cribrum, ſic dictum, quia crebris pertuſum eſt foraminibus ad res purgandas à pulvere & immundis (unde Cribrarius, the Garbler) which well agreeth with our Act.

1 R. 3. cap. 11.

12 E. 4. cap. 2. the ſtatute appointeth who ſhall garble them.

A Sive and to ſift do come from the Saxons, viz. ſıꝼ, ſıꝼꝛ This Act conſiſteth of a Preamble and a Body. In the Preamble it is rehearſed, That unclean, corrupt, and mingled Spices, Drugs, Wares, and Merchandiſes garbleable do tend to the jeopardy of his Majeſties perſon, and of his ſubjects uſing the ſame in their meats, drinks, and other needfull occaſions, &c.

The ſelling of ſuch unclean, corrupt, and mingled Spices and Drugs uſed in meats, and drinks, is malum in ſe, and (as hath been ſaid) in divers like caſes puniſhable by the Common law. But this Act tendeth to the prevention of ſuch deceipts and abuſes, by garbling and purifying of the ſame before they be ſold, and by puniſhment if they be ſold before they be garbled and purified.

All that is garbleable muſt be garbled and cleanſed and ſealed by the Garbler before ſale, upon pain of forfeiture of the ſame or value thereof, for which an Action popular is given.

There be 32 kindes of Spices and Drugs by ſpecial name mentioned in this Act, viz.

1 Pepper, 2 Cloves, 3 Mace, 4 Nutmegs, 5 Cinnamon, 6 Ginger, 7 Long-pepper, 8 Wormeſeeds, 9 Comin-ſeeds, 10 Anyſeeds, 11 Coliander-ſeeds, 12 Bynny-pepper, 13 Almonds, 14 Dates, 15 Gals, 16 Spikenard, 17 Galingall, 18 Turmerick, 19 Setwell, 20 Caſſia ſiſtula, 21 Ginny-pepper, 22 Seme, 24 Barberies, 24 Rice, 25 Erins, 29 Staveſacre, 27 Calamus, 28 Fennyrick, 29 Caſſia, 30 Lignum, 31 Grains, 32 Caraway-ſeeds.

And in generall words, 1. Gums of all ſorts and kinds garbleable. 2. All other Spices, Drugs, Wares, and Merchandizes garbleable.

* *Nota.* Garbles ſignifie the duſt or ſoile or uncleanneſſe that is ſevered.

¶ Be it furthermore enacted, that if any of the ſaid Spices, Drugs, Wares, or other Merchandizes be mixed with * garbles, matter or thing whatſoever after the ſame be garbled, &c. That then the ſaid Spices, Drugs, &c. or the value thereof ſhall be wholly forfeited.

¶ It

¶ It ſhall and may be lawfull for the Garbler of Spices, &c. within the City of London and the Liberties of the ſame, &c.

There hath been of ancient time an Officer in London and the Liberties of the ſame, called the Garbler of Spices, &c. who may make his Deputies. And this Act giveth him authority at all and every time and times * in the day time to enter into any Shops, Warehouſes, or ſeller, to view and ſearch ſuch Drugs, Spices, &c. and to garble and make clean the ſame.

* This had been implyed if it had not been expreſſed.

¶ There is a Proviſo, that if any Merchant or other perſon (other then Merchants alien, or made or to be made Denizen) ſhall bring any Spice, Drugs, or other Merchandizes garbleable into this Realme, and ſhall not offer the ſame to ſale or ſell the ſame within this Realm, &c. and ſhall tranſport the ſame *bona fide* within eight moneths (accounting 28 dayes to the moneth) after his firſt landing, &c. ſhall not incurre any of the penalties of this Act.

And this Proviſo was added in reſpect of a generall law made in 16 R. 2. that no manner of Spicery, after that it be brought into the Realm, ſhall be carried out of the ſame by Alien or Denizen, upon paine of forfeiture of the ſame. And this Proviſo extendeth onely to the naturall born Subjects, and not to Merchants alien, or made or to be made Denizens. 16 R. 2. cap. 1.

And by the Act of 16 R. 2. cap. 1. it is enacted, that Aliens ſhall ſell Wines by whole veſſels, and ſpicery by whole veſſels and balls, and in no other manner.

The Court of the Leet may inquire of theſe offences following by authority of Parliament.

De viſu franc. Articles of the Leet, to which we will adde 18 E. 2. De viſu franc.
Concerning tracing and killing of Hares. 14 H. 8. cap. 11.
Of Hoſtlers making Horſehead under the aſſize. 32 H. 8. cap. 14.
Of breeders of Horſes under ſtature. 32 H. 8. cap. 13.
Of Artillery, Buts, and Bows. 33 H. 8. ca. 8 9.
Concerning ſhooting in Croſſebows and Handguns. 33 H. 8. cap. 6.
Concerning Victuallers, Artificers, Workmen, and Labourers. 2 E. 6. cap. 15.
Againſt great prices and exceſſe of Wines. 7 E. 7. cap. 5.
For amendment of High wayes. 2 & 3 Ph. & Mar. cap. 3. 5 Eliz. 13. 18 Eliz. 9.
Concerning Puſſers. 4 & 5 P. & M. c. 3
For the preſervation of the ſpawn and fry of Fiſh. 1 Eliz. 17. 1 Jac. 23
Againſt taking of Pheſants and Partriges. 23 Eliz. cap. 10.
Againſt the erection of Cottages and Inmates. Hereof ſee before in this Chapter. 31 Eliz. cap. 7.

By theſe and divers other Acts of Parliament the juriſdiction of this Court of the Leet hath been much increaſed, to the end that the Subject might have remedy and juſtice at his own doores: and therefore it is requiſite that the Steward of this Court be learned in the law, for Ignorantia Judicis eſt calamitas innocentis. See Rot. Parl. 51 E. 3. nu. 49. concerning Taverners.

The ſtyle of this Court of the Leet is, Curia viſus franc' pleg'tent' apud B. coram A. B. Seneſchallo, &c.

Francus plegius Saxonice frieborogh Freboroe, Anglice, Freepledge.

The Conſtables or petty Conſtables are choſen by the Common Law at the Leet or Torn, and are by the Common law conſervators of the peace, and may take ſurety of the peace by Obligation, and are as ancient as Torns or Leets be, and began not about the beginning of E. 3. as ſome have ſuppoſed: Vide the Chapter of the Hundred Court for the Chief Conſtable, & 9 E. 4. 36. 5 H. 7. 6. 11 H. 4. 12, 38 E. 3. 3. 3 H. 4. 9. 10 E. 4. 17 44 E. 3. bar. 202. 32 E. 3. ib. 259. 46 E. 3. ib. 214 Vide. Rot. Parl. 6 E. 3. poſt. nu. 6. Fitz. juſt. of Peace 172. 3 E. 3. cor. 288. 12 H. 7. 18. Fineux.

But to ſay once for all: Repetition without addition is but loſſe of time, and altogether unprofitable.

CAP.

CAP. LV.

The Court of the County.

See the second part of the Inſt. Mag. Cart. ca. 35.

The Style of this Court is: Buck. Cura primia Comitatus E. C. Militis vicecomitis Com' prædict tent' apud B. &c. And the next Court Curia ſecunda E. C. vicecom' Com' prædict' &c. And ſo forth.

See the ſtatute of W. 2. cap. 36. againſt procurement of Suits in this Court.

Lib. 6. fol. 12. Jenkemans caſe. Stat. de Merton cap. 3. 44 E. 3. 10. 2 part of the Inſt. Mag. Cart. ca. 35

This Court is no Court of Record, and the ſuitors are the Judges thereof. But in a Rediſſeiſon the Sheriffe is Judge by the ſtatute of Gerton cap. 3. and a Writ of error lyeth of his judgement.

F. N. B. 119. g. h. Ib. 85. g. &c. & 138. b. &c.

Of the antiquity and juriſdiction of this Court, you ſhall read in the ſtatute of Magna carta, cap. 35. It holdeth no plea of any debt or damages to the value of 40 s. or above, nor of any treſpaſſe done vi & armis, becauſe a fine is due thereby to the King. But of debt, dettrue, treſpaſſe, and other actions perſonall above 40 s. the Sheriffe may hold plea by force of a Writ of Juſticies to him directed, for that is in nature of a Commiſſion to him, and is Vicountel, and not returnable. And he may before any County Court award a Summons to his Bailie returnable within 2 or 3 dayes at his diſcretion, to ſummon the defendant by his goods &c. to anſwer; and if the Bailie returne Nihil, and the plaintiff removeth the ſame by a Pone into the Common pleas, that Court ſhall not grant a Capias, for the nature of the Writ doth not warrant a Capias, and the Sheriffe could not grant the ſame, neither doth the Writ of Juſticies alter the nature of the Court of the County, for therein the Sheriffe is not Judge, but the Suitors; and upon a Judgement given therein a Writ of falſe judgement doth lye, and not a Writ of error. And in divers Realactions a Writ of Juſticies doth lye as it appeareth in our books, as in Bre D' admeaſurement of dower or paſture, in Cuſtoms & ſervices, Meſne, Quod permittat, Rationabilibus diviſis, Sect' ad molend', De nuiſans, de Curia claudenda, Annuity, &c.

4 Eliz. Dier 222. 15 Eliz. 319. a.

In the County Court upon the Exigent after 5 exact, the Coroners give judgement, Ideo utlagerur per judicium Coronatorum. But by this Judgement no goods are forfeited before the Outlary appeare of Record: and that is the reaſon, that no man can claim the goods of Outlaws by preſcription. Neither ſhall ſuch an Outlawry diſable the party: but if upon a Certiorari to the Coroners they certifie the Outlawry, this ſhall ſerve the King for the forfeiture of his goods, but ſhall not diſable the party till the Exigent be returned.

CAP.

CAP. LVI.

The Court of the Hundred.

THis is no Court of Record, and the Suitors be thereof Judges. Of the antiquity and jurisdiction hereof vide Magna Carta, ubi sup. And as the Leet was derived out of the Tourn for the ease of the people, so this Court of the Hundred for the same cause was derived out of the Court of the County, and is a Court Baron in his nature. 2 part of the Inst. Mag. Carr. ca 35. 12 Rep. 28.

By the Statute of 14 E. 3. Hundreds (except such as then were of estate in fee) are rejoyned (as to the Bailywick of the same) to the Counties, and all grants made of the Bailywick of Hundreds since that Statute are void, and the making of the Bailiffs thereof belong to the Sheriffe, for the better execution of Justice and of his Office. And so it was resolved by the Lord Treasurer Lea and all the Barons of the Exchequer, and so decreed in the Exchequer Chamber, between Forteſcue of Buckinghamshire plaintiffe, and the Sheriffe of the same defendant, Term. 2. Caroli Regis, the plaintiff having of late divers Hundreds granted to him for life in the County of Buck, reserving a rent, which the Sheriffe detained and put in Bailiffs of his own. And a commandement was given by the Court to the Attorney Generall to abolish the like in other Counties, for that they were against law, and belonged to the office of the Sheriffe, and were occasions of delayes and hinderances of Justice. See the Statute of W. 2. cap. 38. against procurement of suits in this Court. 14 E. 3. cap. 9. 4 E. 3. cap. 15.

The style of this Court is, Curia E. C. militis hundredi sui de B. in com. Buck tent', &c. Coram A. B. Seneſchallo ibidem.

If there be a Bailiffe of a Liberty appointed by the Lord of the Liberty, or the Sheriffs Bailiffe of any Hundred, Wapentake, or Tything, which have not Lands or Tenements sufficient in that County, there lyeth a Writ De Balivo amovendo, grounded upon the Statute of 4 E. 3. cap. 9. There are Constables of the Hundred commonly called, chief Constables, so named, because Constables of Towns are called petit Constables. These Constables of Hundreds were created by the Statute of 13. E. 1. and their authority limited to Five things. 1. To make the view of armour. 2. To present before Justices assigned such defaults as they doe see in the Country about armour. 3. To present defaults of suits of Tourns, 4 Of High wayes. 5 To present all such as lodge Strangers in uplandish towns, for whom they will not answer. Divers and many Acts of Parliament have given the chief Constable and pety Constable more authority and power then originally they had, which hath been well collected by others. For no Officer that is constituted by Act of Parliament hath more authority then the Act that creates him, or some subsequent Act of Parliament doth give him, for he cannot prescribe as the Officer by the Common law may. Nota 10 E. 4. fo. 17. the petit Constable was an Officer by the Common law per Curiam, Vid. 4 E. 3. cap. 3. 25 E. 3. ca. 2. See in the Chapter of Hue and Cry in the Third part of the Institutes, Hue and Cry alwayes by the Common law made by the Constables of Towns, &c. 9 E. 2. Linc' flat. Unicum, 4 E. 3. cap. 9. 5 E. 3. cap. 4. Register 178. F. N. B. 164. b. Stat. de 13 E. 1. De Winch. ca. 6. Lambard, &c. See cap. Leet for the pety Constable.

Fleta lib. 1. cap. 2. § De Vic' & Constabulariis, &c.

CAP. LVII.

The Court Baron.

See the second part of the Inst. Mag. Cart. ca. 15.

THis is a Court incident to every Mannor, and is not of Record, and the Suitors be thereof Judges, although the Plea be holden by force of a Writ of right.

There is also a Customary Mannor whereof you may read in the First part of the Institutes Sect. 73. Verb. Court, &c.

And this was first instituted for the ease of the Tenants, and for the ending of debts and damages under 40 s. at home, as it were at their own doores.

1 part of the Inst. Sect. 73.

Now there for the antiquity and institution of this Court, and the Articles inquirable therein are usuall and well known.

The stile of the Court is, Curia Baronis E. C. Militis manerii sui prædicti (having the Mannors name written in the Margent) tent' tali die, &c. coram A. B. Seneschallo ibidem.

In the reigne of E. 1. we have seen Court Rols having the Mannors name in the margent. Aula ibidem ten' tali die &c. the Court of the Mannor being so called, because it was holden in the Hall of the Mannor: as the Court of the Marshalsea is called Curia Aulæ Hospitii Domini Regis, because of ancient time it was holden in the Kings Hall.

CAP.

CAP. LVIII.

The Court of ancient Demeſne.

THoſe Manors are called the ancient Demeſnes of the Crowne which were in the hands of St. Edward the Confeſſor or William the Conquerour, and ſo expreſſed in the Book of Domeſday made or begun in the 14 yeare of William the Conquerour; for ſo we finde it in Libro Rubro Scaccarii in Cuſtodia Remem' Regis fo. 47. quod liber vocatus Domeſday compoſitus fuit Anno 14 Willielmi Regis Conqueſtoris. And Radulphus Niger Monk of Cogſhall in Eſſex in vita Willielmi Conqueſtoris hath theſe words, Anais 1081, 1082, 1083, 1084, 1085, 1086, Rex Willielmus deſcribi fecit omnes Barones & feudatos Milites, & quot carucatas trꝛ quiſque habebat & redditus poſſeſſionum. And Anno Domini 1081, was the 14 year of William the Conquerour; and this great and excellent ſurvey laſted 6 years. And in Lucubrat' Okham, it is worthily called Liber Judicatorius, becauſe it is the only triall of ancient Demeſne; againſt which, for the uncontrollable truth and verity thereof, there can be taken no averment. And therefore in that reſpect like the doome and judgement at Doomeſday.

See the ſecond part of the Inſtit. W.1.c.31.f.546.

S e 11 E.3.32.

Herein Fitz. in his N.B.fo.16. aſcribing it to Edw. the Confeſſor, was deceived. *Vid.* the Preface to the third Book of my Reports.

In Chent' Archie. Cant': Sandwice in anno quo facta eſt hæc deſcriptio. In Doomeſday it ſelfe lege librum, for hereby it appeareth that it was made in the time of the Conquerour.

All thoſe that hold of theſe Manors in Socage are tenants in ancient Demeſne: and they plowed the Kings Demeſnes of his Manors, ſowed and harrowed the ſame, mowed and made his Medows, and other ſuch ſervices of husbandry for the ſuſtenance of the King and his honourable houſhold, maintenance of his ſtable, and other like neceſſaries pertaining to the Kings husbandry. And to the end theſe tenants might the better apply themſelves to their labours for the profit of the King, they had Six priviledges. Firſt, that they ſhould not be impleaded for any their lands, &c. out of the ſaid Manor, but have juſtice adminiſtred to them at their own doꝛe by the little writ of Right Cloſe directed to the Bailifs of the Kings Manors, or to the Lord of the Manor, if it be in the hands of a ſubject; and if they were impleaded out of the Manor, they may abate the Writ. 2 They cannot be impannelled to appear at Weſtm. or elſwhere in any other Court upon any inqueſt or triall of any cauſe. 3 They are free and quiet from all manner of Tols in Fairs and Markets for all things concerning husbandry and ſuſtenance. 4 And of Tares and Tallages by Parliaments, unleſſe they be ſpecially named. 5 And of contribution to the expences of the Knights of the Parliament, &c. 6 If they be ſeverally diſtreyned for other ſervices, they all for ſaving of charges may joyn in a Writ of Monſtraverunt, albeit they be ſeverall Tenants.

See the ſecond part of the Inſt. Art. ſup. Cart. cap. 2.

The priviledge of tenants in ancient demeſne.

Theſe priviledges remain ſtill, although the Manor be come to the hands of Subjects, and although their ſervice of the plough is for the moſt part altered and turned into money: Avera in Domeſday Grentbrigſh Rexfordham, ſed tamen ſemper inveniat averam vel 8 d. in ſervicio Regis, that is, a dayes worꝛk of a Ploughman, or 8 d.

This Court is in nature of a Court Baron, wherein the ſuitors are Judges, and is no Court of Recorꝛd, for Brevia Clauſa Recordum non habent.

Note, the Demandant in a writ of Right Cloſe cannot remove the plea out of the Court of the Lord for any cauſe, the Tenant may remove the ſame for 7 cauſes, viz. 1. For that he holdeth it ad Communem legem. As if a fine and recovery be levied or ſuffered thereof in the Court of Common pleas, this maketh

the land frank fee ſo long as they ſtand in force. 2. If the land be not holden of the Mano^r being ancient Demeſne. 3. If the land be holden by Knights ſervice: for, as hath been ſaid, the ſervice of the Plow and Husbandry is the cauſe of the priviledge. 4. * If there be no ſuitors, or but one ſuitor, for that the ſuitors are Judges, and therefore the Demandant muſt ſue at the Common law, for that there is a Court of Juſtice within the Mano^r. 5. If the Tenant accept a releaſe of his Lord of his ſeigniory, or the ſeigniory be otherwiſe extinguiſhed by reaſon of the ſeiſon of the King or otherwiſe. 6. Or if the Lord diſſeiſe his Tenant and make a feoffment in fee. 7. If the Lord grant the ſervices of his Tenant, and the Tenant attorn.

† Arabant & herciebant ad curiam domini. *i.* they did plough, and harrow at the Mano^r of the Lord.

[a] And this priviledge doth not extend to meer perſonall actions, as debt upon a Leaſe. Treſpaſſe, Quare clauſum fregit, and the like, in which by common intendment the title of the freehold ſhall not come in debate. But otherwiſe it is of all reall actions, and alſo in actions of Account, Replevin, Ejectione firmæ, writ of Meſne and the like, where by common intendment the realty ſhall come in queſtion.

[b] Lands in ancient demeſne are extendable upon a ſtatute Merchant, Staple, Elegit, and regularly all generall ſtatutes extend to ancient demeſne.

[c] But a Reditſeiſin, although they concern the realty, doth not lie in ancient demeſne, becauſe the proceeding in a Reditſeiſin is appointed by the ſtatutes to be made by the Sheriff, aſſumptis ſecum Coronatoribus Comitatus, &c. and in ancient demeſne there are no Coroners, [d] but otherwiſe it is in an action of Waſt.

And as the Tenants in ancient Demeſne are carefull to preſerve their priviledges, ſo the Lord is as carefull to preſerve his ſeigniory, and the tenure of this tenancy in ancient demeſne. [e] And therefore if the Tenant levy a fine, or ſuffer a recovery in the Court of Common pleas, &c. whereby for the time the land is become frankfree, the Lord by a writ of Diſceit may not onely reſtore himſelfe to his true ſeigniory, but utterly avoid the fine, and reſtore his Tenant againſt the recovery and his own fine to the land again in his former eſtate: and the reaſon thereof is, for that the recovery or fine was not ſuffered or levied before a competent Judge in the right Court, which ought to have been in the Court of ancient Demeſne, [f] and therefore after the reverſall in the writ of Diſceit, it is now tanquam coram non Judice, and the parties to the fine or recovery ſhall be fined and impriſoned pro deceptione Curiæ.

[g] But if in a writ of Right cloſe in ancient Demeſne, the Demandant maketh his proteſtation to ſue in the nature of Aſſiſe of Mord', the Tenant plead in abatement of the writ, and the writ by judgement is abated, the Demandant brings a writ of falſe judgement, wherein the writ is affirmed to be good, the Court of Common pleas ſhall proceed as the inferiour Court ſhould have done, [g] although that judgement be given to recover the land in the Common pleas, yet the land is not frankfree, but remains ancient Demeſne, becauſe the beginning and foundation thereof was in ancient Demeſne.

[h] They may levy a fine in ancient Demeſne which by the Cuſtome it is ſaid to be a bar of the eſtate tail; but certainly that will not hold.

[i] If the tenant remove the plea for the cauſe mentioned in the Recordare, he may come into the Kings Court, and aſſign other cauſe, and twenty, if he hath, to maintain the juriſdiction of the Kings Court.

* Regiſt. fo. 17 E. 3. 44. F.N.B. 14. c. 41 E. 3. 22. 49 E. 3. 7. 50 E. 3. 14.

† Domeſday *ſepe herciare* or *herſeare* of the French word [*herſe.*]

[a] Vid. li. 5. fo. 105. Allens caſe. 44 E. 4. 38. 46 E. 3. 1. 49 E. 3. 7. 44 E. 3. 22. 21 E. 3. 10. 32. 40 E. 3. 4. 28 E. 3. 95. 34 E. 1. Anc' demeſne 98. 21 E. 4 Anc' demeſne 6. 22 Aſſ. 45. F.N.B. 136. k. 30 E. 3. 12.

[b] 2 E. 2. Execut. 118. 15 E. 3. ib. 62. 8 E. ib. 136. 7 H. 4. 19. Lib. 5. fo. 105. 19 H. 6 64.

[c] 4 E. 2. Rediſſeiſin 9.

[d] 7 H. 6. 35. 8 H. 6. 34. 32 H. 6. 35. F.N.B. 189. g. Lib. 5. fo. 105. Allen. caſe. 22 El. Dier 373. 7 H. 7. 11.

[e] 2 E. 4. 26. 8 E. 4. 6. 7 H. 4. 44. 8 H. 4. 24. 17 E. 3. 31. Trin. 16 E 3. Corã Rege Rot. 132. Eborum. Tr. 13 E. 3. Corã Rege Rot. 108. Glouc' (finis) Tr. 3 H. 5. Coram Rege Rot. 9. Eſſex (finis) 21 E. 3. 20. 56. 21 Aſſ. 4. 26 E. 3. 63. Vid. Dier 22 El. 373.

[f] 3 E. 3. 9. F.N.B. 19 d.

[g] Dier 22 El. 373. 27 Aſſ. 5. 44 E. 3. 38.

[h] 21 E. 3. 32.

[i] 21 E. 3. 32.

CAP.

CAP. LIX.

The Court of the Coroner.

This Coroner Coronator is so called, because he deals principally with Pleas of the Crown or matters concerning the Crown: He is eligible by the Freeholders of the County, and so continues to this day, as of ancient time the [a] Sheriff and [a] Conservators of the peace were, because the people had a great interest and safety in the due execution of their offices, and so long as they were eligible, they continued, notwithstanding the demise of the King, as the Coroner doth to this day. And of ancient time this office was of great estimation, for none could have it under the degree of a Knight. [b] And it appeareth by the writ De Coronatore eligendo, that he must have two properties, viz. sufficient knowledge, ability and diligence in execution of his office, implied in these words, Et talem eligi facias, qui melius sciat, & possit officio illi intendere. [c] And the Sheriff after he be elected, shall give unto him his oath duly to execute his office: And the Court which he holdeth is a Court of Record. And commonly there are Four in every County of England; but in the twelve shires in Wales, and in Cheshire there are but two.

Regist. 172. F.N.B. 164.

[a] Artic. sup. Cart. cap. 8. & 13. 12 R. 2. cap. 2. 14 E. 3. cap. 7. [a] Ro. Pat. 5 E. 1. Lambard Justice of Peace. 16. b.

[b] Regist. 177. F.N.B. 164. Stanf. 48. c. W. 1. cap. 10.

[c] 14 E. 3. ca. 8. He must have sufficient land in the County whereof he may answer all people. F.N.B. 164. 34 H. 8. 35 H. 8. cap. 13.

Now concerning his jurisdiction, what it was before the statute of Magna Carta, and what he hath at this day, and of his Antiquity, you may reade in the Second part of the Institutes, Mag. Cart. cap. 17. and the Exposition upon the same. Merton cap. 3. Rediſſeiſin, and W. 1. cap. 10. & 26 & Artic' super Cart. cap. 3. and the Exposition of the same.

He is to take nothing for doing his office upon grievous forfeiture, but by 3 H. 7 he is to have upon an indictment found of murder 13 s. 4 d. of the goods of the murtherer, and if he hath nothing, of the amerciament of the Town ship for the escape, &c. See also the ancient Authors, Mirror des Justices, Cap. 1. §. del office del Coroner. Bracton Lib. 3. fo. 121, 122, 123. Britton Cap. 1. Fleta lib. 1, ca. 18. Statutum de anno 4 E. 1. de officio Coronatoris, and Stanf. Pl. Coron. fol. 48, 49, 50.

3 H. 7. cap. 1.

Vet. Mag. Cart. 4 E. 1. part. 1. 119. Stanf. 49. e. f.

And as the Sheriff in his Tourn may enquire of all felonies by the Common law, saving of death of man, so the Coroner can enquire of no felony but of the death of man, and that super visum corporis: He shall also enquire of the * escape of the murderer, of Treasure Trove, Deodands, and Wrecks of the Sea. But hereof you shall reade more in the Authorities before cited, and in the Third part of the Institutes, in the title of Appeals.

35 H. 6. 13.

* 3 H. 7. ca. 1. 4 E. 1. ubi sup.

He ought to deliver the Inquisition of death taken by him at the next Gaol-delivery, or certifie the same into the Kings Bench. * Upon an Inquisition found before him of murder or man-slaughter he ought to put in writing the effect of the evidence given to the Jury before him being materiall, and hath power to binde over witnesses to the next Gaol-delivery in that County. See before in the Chapter of the Courts in London.

3 H. 7. ca. 1. * 1 & 2 Ph. & M. cap. 13.

To conclude, besides his judiciall place, he hath also authority ministeriall as a Sheriff, &c. viz. when there is just exception taken to the Sheriff, judiciall processe shall be awarded to the Coroners for the execution of the Kings writs, in which cases he is locum tenens Vicecomitis, and in some speciall case the Kings originall writ shall be immediately directed unto him.

Pl. Com.

In defectu Vic' pro brevibus Regis exequendis, videtur curiæ hic quod aliis quam Coronatoribus non est demandand'. Vide Vet. Mag. Cart. parte 2. fo. 19, 20, 21. Stat. Exoniæ. Fleta Lib. 1, Cap. 18.

Pasch. 9 E. 3. Coram Rege Rot. 80. Ebor. West.

CAP. LX.

The Court of *Pepoudres*, vulgarly Pipowders, *Curia Pedis pulverisati.*

Bract. l. 5. f. 334. a.

THis Court is incident to every Fair and Market, as a Court Baron to a Manor, and is derived of two Latine words, as is apparent, and so called, because that for contracts and injuries done concerning the Fair or Market, there shall be as speedy justice done for advancement of Trade, and Traffick, as the dust can fall from the foot, the proceeding there being de hora in horam. And therefore Bracton saith, Item propterea qui celerem debent habere justitiam, sicut sunt mercatores quibus exhibetur Justitia *Pepoudrous, &c.*

Bract. l. 5. f. 334. a.

6 H. 4. 3. 6 E. 4. 3 b. 7 E. 4. 23. Lib. 6. fo. 11. a. & 20.

This is a Court of Record to be holden before the Steward of the Court, and the jurisdiction thereof consisteth in Four conclusions. 1. The contract or cause of action must be in the same time of the same Faire or Market, * and not before or in a former. 2. It must be for some matter concerning the same Fair or Market, done, complained on, heard and determined. 3. It must be within the precinct of that Fair or Market. 4. The Plaintif must take an oath according to the statute of 17 E. 4. cap. 2. but that concludeth not the Defendant. [a] And all this was resolved, & adjudged in a writ of Error brought by Hall against Jones, and the case was this: Jones being Register of the Bishop of Glouc', brought an Action upon the case in a Court of Pipowders belonging to the Market in Glocester against Hall for these words; Master Jones and his Clerks have by colour of his office extorted and gotten 300 l. per annum, by unlawfull means for many years together above their ordinary fees, for proving of Testaments and granting Administrations. And not guilty being pleaded, &c. it was tried and adjudged for the Plaintif; and divers errors were assigned, but the judgment was reversed for these errors following. 1. That this Court of Pipowders, being incident to the Market hath no jurisdiction but of such things as concern the Market; and these slanderous words did in no sort concern the Market: but if one slander the wares of any in the Market, whereby he cannot make sale of them, an action doth lye in that Court. 2. It appeared in the Record that the words were spoken the day before the Market; [b] and no action lyeth in that Court but for an injury within the jurisdiction of the Court done, complained on, heard & determined on the same Market day, the proceeding being de hora in horam, and within the precinct of the Market. And herewith agreeth 3 Mar. Dier 132. And it was resolved that this Court was incident as well to a Market as to a Fair.

* See before Cap. Justices in Eire, simile pag. 185.

[a] Mic. 42 & 43 El. Coram Rege. Lib. 10. f. 61. En le case del Marshalsey Jones case.

[b] 7 H. 6. 18, 19. Kelw. 23 H. 7. 39. Doct. & St. fo. 11. 3 Mar. Dier 132. Int. Hall & Pinder. 45 E. 3. 1. 1 H. 4. 6. 13 H. 7. 19 b. 12 H. 7. 16, 17.

[c] And there may be a Court of Pipowders by custome without Fair or Market, & a Market without an owner. Another error was assigned, for that it is provided by the [d] statutes of 17 E. 4. and 1 R. 3. that no plea shall be holden in the Court of Pipowders, except the Plaintif or his Attorny will make oath, that the contract or other deed contained in the Declaration was done or committed within the time of the Fair: but this Error was disallowed by the Court, for although this ought to be done, if the Defendant will stand upon it, notwithstanding it shall not be made part of the Record.

[c] 13 E. 4. 8. b. 8 H. 7. 4, 5. 12 E. 4. 9. 19 H. 8. Br. incidents 34. 12 H. 6. 3. b.

[d] 17 E. 4. c. 2. 1 R. 3. cap. 6.

Vide Lib. Intrat. Rast. fo. 464. Pipowder 1, 2. fo. 18. Execution 3. fo. 158. Gaoler 1.

CAP.

CAP. LXI.

The Court of the Clerk of the Market.

HE is to this day called Clericus Mercati Hoſpitii Regis, for of ancient time there was a continuall Market kept at the Court gate, where the King was better [a] ſerved with Victuals for his houſhold then by Purveyors, the ſubject better uſed, and the King at far leſſe charge in reſpect of the multitude of Purveyors, &c. And the Officer of the Market of the Kings houſhold retaineth his name ſtill, although the good end thereof according to the firſt inſtitution ceaſeth.

The [b] Clerk of the Market ſhall hold no plea but ſuch as were holden in the reign of E. 1. And at this day there is no great need of him, for the Juſtices of Aſſiſe, the Juſtices of Oier and Terminer, Juſtices of Peace, and the Sheriffs in their Tourns, and the Lords in their Leets, may and do inquire of falſe weights and meaſures.

[c] He doth keep a Court and inquireth of weights and meaſures whether they be according to the Kings ſtandard or no, and for that purpoſe he maketh proceſſe to Sheriffs and Bailifs to return Pannels before him, &c. [d] And he is to deliver the Eſtreats of thoſe things which touch his office into the Exchequer.

[e] Of Drink (that is to ſay) of Wine, Ale, and Beer, and of Corn and Grain there ought to be but one meaſure: Una menſura vini, Cerviſiæ & bladi, & Virgæ, and of all other merchandize per totum regnum. De ponderibus vero ſicut de menſuris.

Britton fo. 75. b. Fleta l. 2. c. 20. Rot. Par. 50 E. 3. nu. 87. & 152. 13 R. 2. cap. 4. 33 H. 8. cap. 20. 17 H. 8. cap. 24. Lib. Int. Co. 443.

[a] See the 2 part of the Inſtitutes, 28 E. 1. Antic. ſup. Cart. ca. 2. and the Expoſition thereupon.

[b] Rot. Parl. 8 H. 4. nu. 82.

[c] 16 R. 2. ca. 3.

[d] Scat. de modo mittendi extract. in Scaccarium. Anno 15 E. 1. & 15 E. 2.

[e] Mag. Cart. c. 25. 27 E. 3. ca. 10. 25 E. 3. cap. 9.

14 E. 3. ca. 12. 13 R. 2. cap. 9. 15 R. 2. 4. 16 R. 2. cap. 3. 9 H. 5. cap. 8. 11 H. 7. cap. 4. 12 H. 7. cap. 5. 1 H. 5. cap. 10.

¶ *Weights.* Trutina Cãpana. Ordinatio menſurar' 31 E. 3.

But notwithſtanding theſe ſtatutes there be within this Realm two kind of weights, the one called Troy weight, which is commanded by the ſtatute, and this derived from the grain or corn of barly from the middeſt of the Ear and dryed. 24 of theſe corns or grains make a penny weight, and 20 of theſe penny weights make an ounce, and 12 ounces make a pound Troy. A grain contains 20 minutes, a minute contains 24 duſts, a duſt contains 24 blanks. 12 grains of fine gold make a Caret. 24 Carets of fine gold make an ounce, and 12 ounces make a pound of fine gold. By this Troy weight are weighed according to law pearls, pretious ſtones, gold and ſilver, bread, wheat, and ſuch like.

There is another kinde of weight called Aver de pois. A pound of this conſiſteth of 16 ounces, every ounce having twenty penny weight, every penny weight 32 grains, and ½ of a grain. It is called Aver de pois, becauſe thereby they have full meaſure. Thereby are weighed all Phyſicall drugs, Wax, Pitch, Tarre, Iron, Steele, Lead, Hemp, Flaxe, Fleſh, Butter, Cheeſe, and divers other commodities, but ſpecially every commodity ſubject to waſte. There was another weight called the Ancell or Anſell weight, which was when the Scales were fixed to a beam or ſtaffe, and he that weighed by it, uſed his forefinger or hand in the middeſt, wherein was great deceipt, and therefore is put out by the ſtatute of 25 E. 3. cap. 9. 34 E. 3. cap. 5. 8 H. 6. cap. 5. It is derived ab Anſa, which is the handle of the ballance, and this weight was guided by the hand.

¶ *Of Meaſures.*

Meaſures of Troy be of three kinds, viz. of things that be dry, of Liquor, and of Longitude, Latitude and profundity.

¶ Of

Ordinatio menſur'. 31 E. 1. ubi ſup.

¶ Of dry things, 4 grains make a penny weight, 20 penny weight make an ounce, 12 ounces a pound or pinte (for a pound weight is a pinte in meaſure) two pounds or pintes make a quart, two quarts make a pottle, two pottles make a gallon, two gallons make a peck, four pecks make a buſhell, foure buſhels make a Combe, two Combes make a Quarter, ſix Quarters make a Wey, and ten Quarters make a Laſt.

¶ Of Liquor 12 ounces make a pound, 8 pound make a gallon of wine, 8 gallons of wine make a Buſhell of London, which is the 8 part of a Quarter.

Of wine ſee the ſtatutes of 1 R. 3. cap. 13. 28 H. 8. cap. 14.

Of Ale and Beer { the Ferkine 8 / the Kilderkin 16 / the Barrell 32 / the Hogſhead 63 / or Quarter } Gallons. Et ſic de cæteris.

See Aſſiſa Panis & Cerviſiæ. 51 H. 3.

Vet. Mag. Cart. fo. 32, 32. 2 part.

Ibidem 44 b. Compoſitio ulnarum & perticarum Vet. Mag. Cart. 2 parte 45, 46. Anno 31 E. 1. Statut. de terris menſur.

See the Statute Compoſitio de Ponderibus.

Statut' de Piſtoribus, Vet. Mag. Cart. 2 parte 23, 24.

Statut' Panis & Cerviſiæ.

¶ Of Longitude, Latitude, and profundity. 3 grains of barly in length make an Inch, 12 Inches make a foot, 3 foot make a yard, a yard and a quarter make an Ell, 5 yards and a halfe make a Perche, 40 Perches in length make a Furlong, 8 Furlongs make a Mile.

I may ſpeake of the Sellers by the weight of Aver de poys, as Tacitus ſpake of the Augures in Rome. Hoc genus hominum ſemper vitabitur, & ſemper in Civitate retinebitur.

But now let us ſee what fees the Clerk of the Market ought to take. By the ſtatute of W. 1. cap. 26. it is enacted that no Sheriff or other Miniſter of the King ſhall take any reward for doing his office, &c. And the Kings Clerk of the Market is the Kings Miniſter, and therefore he is within the parview of this ſtatute.

W. 1. An. 3 E. 1. ca. 26.

I find that in 8 R. 2. in open Parliament a Groat was allowed to him for marking and ſealing of every buſhell, 2 d. of every half buſhell, 1 d. of every peck, and ſo according to that rate.

Rot. Par. 8 R. 2. nu. 11.

By the ſtatute of 7 H. 7. the chief Officer of every City and Borough ſhall take for ſealing of every buſhell a penny, of every other meaſure a halfpenny, of every hundred weight 1 d. and of every halfe hundred ob. and of every weight under a farthing, and not above.

7 H. 7. ca 3. 11 H. 4. cap. 4.

The Clerk of the Market in the reign of Queen Eliz. claimed by cuſtome for the examination and view of every buſhell ſealed before by the Clerk of the Market, whether it were lawfull or unlawfull 2 d. and in like manner of every leſſer meaſure of wood 1 d. and in like manner of Inholders meaſures 4 d. and of the meaſures of Victuallers 2 d. and divers other fees for examination and viewing of weights and meaſures whether they were lawfull or unlawfull, as is aforeſaid. And it was reſolved by all the Judges of England, that no fee was due to the Clerk of the Market for view and examination onely of weights and meaſures for three cauſes. 1. The ſaid Parliament Roll of 8 R. 2. alloweth a fee for ſealing, and ſo doth 7 H. 7. and 11 H. 7. but no allowance for view or examination. 2. The weights and meaſures are either true, according as before they were ſealed, or falſe: if true, it ſhould be againſt reaſon to charge the innocent, for that were diſperdere juſtum cum impio; if falſe, then by the ſtatute of 13 R. 2. they ought to be burnt, and the end of the view & examination is to find out falſhood, to the end they might be puniſhed, and fined to the King, as appeareth by the ſtatute of 17 R. 2. but no fee is to be taken therefore. 3. Whereas the Clerk of the Market affirmed, that theſe fees had been of long time taken, the Judges ſaid, that malus uſus abolendus eſt, and the taking of fees for view and examination only was extortion, and that they could not preſcribe againſt the ſaid ſtatute of W. 1. See in the 2. part of the Inſtitutes, the Expoſition of the ſaid ſtatute of W. 1.

13 R. 2. cap. 4. 38 Aſſ. p. 11.

By the ſaid ſtatute of 13 R. 2. he ought to take no common fine, for before that ſtatute

ſtatute he did uſe to take a reward (which the Act tearmeth a fine) for not inquiry of defaults, whereby the King was prevented of his fine, the delinquent not puniſhed, and the people wronged by extortion and permiſſion of falſe meaſures: and therefore the Act provided that no common fine ſhall be taken, as is aforeſaid, but that every perſon which is found in default touching the ſame office be puniſhed according to his deſert. And the Clerk of the Market cannot ſet any price of any thing ſaleable in the Market, for that belongs not to weights and meaſures; and by the Common law Arbitrio Domini res æſtimari debet, which cannot be altered but by Parliament; and again, Nemo cogitur rem ſuam vendere etiam juſto precio; and things ſaleable in the Market of one kind are not of one goodneſſe: but he ought to aſſiſe weights and meaſures.

12 E.4.8.b. 23 E.3.cap.6. 13 R.2.cap.8. 3 H.8.cap.8. 6 R.2.cap.13. Rot.Par.37 E.3. nu.39.

It is enacted that good examination and correction be had in Towns infranchiſed touching weights and meaſures, ſo as the * ſtatutes thereof made be duly obſerved.

* Which are before in this Chapter.

CAP. LXII.

The Court of the Commiſſioners of Sewers.

QUando [a] aqua profluit, that is, when water doth iſſue, vulgarly, ſue: hereupon commeth the word Suera, for a ſewer, paſſage, channell or gutter of water.

[a] Vid. Paſch. 22 E.1. in Banco Rot. 52. Kanc' Ric'de Gras Com'de Sewers, Vi. Regiſt. 287.a. Certiorar'.

[b] At the complaint of Henry de Lacye Earle of Lincolne, a Commiſſion of Sewers was granted to Roger de Brabaſon Mayor, and the Sheriffs of London.

[b] Rot. Parl. Anno 35 E.1. at Carliſle

[c] Their authority is by Commiſſion under the Great ſeal in hæc verba, at this day grounded and warranted by the Act of Parliament of 23 H. 8.

[c] 23 H.8.cap.5.

[d] Of their juriſdiction you may reade in my Reports, and ſee the ſtatutes of 6 H.6.cap.5. 8 H.6.cap.8. 23 H.6.cap.9. 12 E.4.ca.6.4 H.7.ca.1. 6 H.8.cap.10, 23 H.8.cap.5.& 10. 3 E.6.cap.8. 1 Mar.cap.11. 13 Eliz cap.9.

[d] Lib.5.f.99, 100. Rooks caſe. Lib.10.fo.137. *Le caſe de Molin de Cheſter*, & fo. 139. Keighleys caſe. Ib.141. *Le caſe de Iſle de Ely.*

Certain neceſſary obſervations upon ſome of theſe ſtatutes, and principally wherein the ſtatute of 23 H. 8. cap. 5. hath been explained, declared, or altered by any of the ſaid ſubſequent ſtatutes.

[e] 1 This Commiſſion ſhall be granted to ſuch ſubſtantiall & indifferent perſons as ſhall be named by the Lord Chancelor, the Lord Treaſurer, and the two Chief Juſtices, or any three of them, whereof the Lord Chancelour to be one.

Vid. Regiſt. 252.b De antiqua trenchea obſtruenda & nova faciendâ vel habenda Ad quod damnum. Ibid. 254.b. De aquæ ductu, & 255.a. F.N.B.225.e. Tr.31.E.3.fol. 44.b. in libro meo M.S. 19 E.3.barre 279.

[f] 2 Every Commiſſioner before he take upon him the execution therof ſhal take the Corporall Oath mentioned in that Act before the Lord Chancelour, or ſuch as the Lord Chancelour ſhall direct by Writ of Dedimus Poteſtatem, or before the Juſtices of peace in their Quarter Seſſions, & ought to have lands or tenements of the clear yearly value of 40 Marks of ſome eſtate of freehold (except as in the Statute is excepted) upon pain of forfeiture of 40 li. and no Farmer of lands within the Precinct of the Commiſſion, unleſſe he hath lands of ſome eſtate of freehold of the yearly value of 40 li. and yet he not to meddle with the lands he hath in farm.

[e] 23 H.8.cap.5. [f] 13 Eliz.cap.9.

[g] 3 The avowry or juſtification for a diſtreſſe taken by force of this Commiſſion ſhall be generall, that the ſaid diſtreſſe, &c. was taken, &c. by force of the Commiſſion of Sewers for a lot or tax aſſeſſed by the ſaid Commiſſion, or for ſuch other Act or cauſe, &c.

[g] 19 E.3.barre 279. [e] 23 H.8.ca.5. 10. To whom and by whom this Commiſſion ſhall be granted.

[h] 4 There muſt be ſix Commiſſioners, &c. at the leaſt, which ſhall ſit by force of the ſaid Commiſſion.

[i] How many Commiſſioners muſt ſit.

[k] 5 That the ſaid Act of 23 H.8. doth not extend to, nor give authority to the

[k] 1 Mar. cap. 11. To what nuſances

[h] 23.H.8. cap. 5. Lib. Intr. Coke 292, 293. the Commiſſion of Sewers extend not.

Commiſſioners

Commiſſioners of Sewers to reform the great hurt and nuſance by reaſon of the ſand riſing out of the Sea, and driven to land by ſtorms and winds. A ſpeciall proviſion is there made for the County of Glamorgan.

3 Jac. cap. 14. *nota*, an excellent expoſition of the ſtatute of 23 H. 8. by this Parliament of 3 Jac.

It is adjudged by Act of Parliament Anno 3 Jacobi Regis cap. 14. That Wals, Ditches, Banks, Gutters, Sewers, Gates, Cauſeys, Bridges, and Watercourſes in or about the City of London, * where no paſſage for Boats is uſed, nor the water therein doth uſually ebbe or flow: which Wals, Ditches, Banks, Gutters, Sewers, and other the premiſes, doe fall into the River of Thames, are not under the ſurvey, correction and amendment of the Commiſſions of Sewers nor of the ſtatutes made for Sewers in Anno 23 H. 8. or of any other ſtatute of Sewers, as it is rehearſed by full conſent of Parliament: and therefore proviſion is made that thoſe Wals, Ditches, Banks, Gutters, Sewers, and other the premiſes, ſhall be ſubject to the Commiſſion of Sewers.

13 Eliz. cap. 9. How long the Commiſſion ſhall endure.

6 That a Commiſſion of Sewers ſhall continue ten years, unleſſe it be repealed or determined by reaſon of any new Commiſſion, or by Superſedeas.

13 Eliz. cap. 9. The laws written in Parchment, & indented, &c. Without Certificat or Royall aſſent.

7 That Laws, Ordinances and Conſtitutions made or to be made by force of any ſuch Commiſſion, and written in Parchment indented under the Seals of the ſaid Commiſſioners or ſix of them, whereof one part ſhall remaine with the Clerk, &c. and the other part in ſuch place as ſix of the ſaid Commiſſioners ſhall appoint, ſhall without any Certificat, and without the Royall aſſent ſtand and continue in full force notwithſtanding any determination of any ſuch Commiſſion by Superſedeas, untill the ſame be altered by the Commiſſioners of Sewers after to be aſſigned, &c.

Determination by expiration.

8 And if any ſuch Commiſſion be determined by expiration of ten yeares next enſuing the Teſte thereof; then ſuch laws, &c. ſo indented and ſealed, &c. ſhall continue for one whole year. And that the Juſtices of peace or ſix of them, whereof one to be of the Quorum, ſhall have authority during that year to execute the ſaid lawes, &c.

Juſtices of peace.

9 That by the granting of a new Commiſſion within that year, the power of the Juſtices of peace to ceaſe.

Nota, no certificat or retourn of the Commiſſions or of any the Ordinances, Laws, or doings.

10 The ſaid Commiſſioners ſhall not be compelled to make any Certificate or retorn the ſaid Commiſſions, or of any of their Ordinances, Lawes, or doings, by authority of the ſaid Commiſſions.

11 See alſo an alteration by the ſtatute of 13 Eliz. concerning fees.

12 Laſtly, this is certaine, that neither the Commiſſioners of Sewers, nor any other, have ſuch an abſolute authority, but that their proceedings are bound by law.

Regiſt. 126, 127. F.N.B. 113, 114.

Vide the ancient Commiſſion of Sewers by the Common law in the Regiſter, and F.N.B.

Rot. Parl. 2 H. 6. nu. 57.

A generall Commiſſion of Sewers enacted by authority of Parliament, not printed.

6 H. 6. cap. 5.

A generall Commiſſion of Sewers enacted by Parliament, and in print. But the Commiſſion by the ſtatute of 23 H. 8. ſtandeth now in force. And yet by diligent peruſall of the former, and by adviſed comparing of them with the latter, it will manifeſt wherein the former defects were, and how continually by the latter they were ſupplied and amended, and give a great light for the true underſtanding of that which now ſtandeth.

Stat. 25 E. 3 ca. 4. 45 E. 3. cap. 2.

Hil. 13 E. 2. coram Rege Rot. 55. Norf. Paſc. 44 E. 3. coram Rege Rot. 2. Mid.

See Hil. 13 E. 3. coram rege, Leges & conſuetudines approbatæ pro reparatione murorum maritimorum & mundatione Foſſatarum & Suetarum in paludibus quæ hic exprimuntur per commiſſionem Regis ad hoc faciendum in Merſhland.

[a] A particular Commiſſion granted to S. Joh. de Sutton, & Sir Rob. de Scrope.

[b] A Commiſſion concerning the River of Lee.

[c] Rumney Marſh in the County of Kent containing 24000 acres, is at this day, and long time hath been governed by certain ancient and equall lawes of Sewers made by a venerable Juſtice Henry de Bathe, in the reign of H. 3. from which laws not only other parts in Kent, but all England receive light and direction: For example: The ſaid generall Act of 23 H. 8. ca. 5. in the clauſe which giveth

[a] 19 E. 3. tit. bar. 279.
[b] 2 E. 3. fo. 26.
[c] The Court of Sewers of Rumney Marſh.

giveth power to the Commiſſioners to make Statutes, Ordinances, and proviſions, &c. neceſſary and behovefull after the laws and cuſtomes of Rumney Marſh in the County of Kent, or otherwiſe by any hopes or means, &c.

Both the Towne and Marſh of Rumney took their name of one Robert Rumney. This Robert (as it appeareth by the Book of Domeſday) held this Town of Odo Biſhop of Baieux, wherein he had 13 Burgeſſes, who for their ſervice at the ſea were diſcharged of all actions and cuſtomes of charge, except felony, breach of the peace and foreſtalling.

See before in the Chapters of the Courts of London, &c. the jurisdiction that the Lord Mayor hath in the River of Thames.

CAP. LXIII.

The Court of the Commiſsioners upon the Statute of Bankrupts.

WE have fetched as well the name as the wickedneſſe of Bankrupts from forein Nations: For Banque in the French is menſa, and a Banquer or Eſchanger is *menſarius, and route is a ſign or mark, as we ſay, a Cart rout is the ſigne or marke where the Cart hath gone: metaphorically it is is taken for him that hath waſted his eſtate, and removed his Banque, ſo as there is left but a mention thereof. Some ſay it ſhould be derived from Banque and rumpue, as he that hath broken his Banque or ſtate.

* The derivation and ſignification of Bankrupt. Cicero pro Flaminio: *In qua civitate nummus moveri nullus poteſt ſine quinq; prætoribus, 3 prætoribus, & quinq; menſariis.*

In former times as the name of a Bankrupt, ſo was the offence it ſelf (as hath been ſaid) a ſtranger to an Engliſhman, who of all other Nations was freeſt of Bankruptry. And the firſt ſtatute that we find againſt this crime, was indeed made againſt ſtrangers, viz. againſt Lombards, who after they had made Obligations to their creditors, ſuddenly eſcaped out of the Realm without any agreement made with their creditors. * It was therefore enacted, that if any Merchant of the Company knowledge himſelfe bound in that manner, that then the Company ſhall anſwer the debt: ſo that another Merchant which is not of the Company ſhall not be thereby grieved nor impeached: neither doe we find either any complaint in Parliament, or Act of Parliament made againſt any Engliſh Bankrupt untill the 34 year of H. 8. when the Engliſh Merchant had rioted in three kinds of coſtlineſſes, viz. coſtly building, coſtly diet, and coſtly apparell, accompanied with neglect of his trade and ſervants, and thereby conſumed his wealth.

25 E. 3. ſtat. 3. cap. 23. Parl. 50 E. 3. nu. 160. againſt Lombards.

* 51 E. 3 nu. 51. Vid. 50 E. 3. ca. 6. & 2 R. 2 cap. 3. ſtat. 2. againſt frauds generally 34 H. 8. cap. 4.

He is called in Latin *Decoctor, à Decoquendo, for conſuming of his eſtate in riotous and delicate living. The ſaid Act of 34 H. 8. is altered by the ſtatutes of 13 Eliz. cap. 7. 1 Jacobi. cap. 15. & 21 Jacobi. cap. 19.

Cicero in Catilinam: *Exercitum collectum ex ruſticis, mendicis, & decoctoribus.*

And it is to be obſerved, that all the aforeſaid ſtatutes and laws made againſt Bankrupts, and for relief of creditors, ſhall be in all things largely and beneficially conſtrued, &c. for the aid, help, and relief of the creditors.

A Bankrupt is deſcribed by the ſtatute of 13 Eliz. cap. 7. and 1 Jac. cap. 15. but more effectually by the ſtatute of 21 Jac. cap. 19. So as by all theſe three he is perfectly deſcribed. And the Commiſſion doth extend to all and every of the ſaid deſcriptions and articles thereof.

The deſcription of a Bankrupt.

The authority of the Commiſſioners and their juriſdiction.

[a] The authority of the Commiſſioners is by Commiſſion under the Great ſeal; their jurisdiction and power is by force of the ſaid Acts of Parliament which ought to be purſued, [b] or elſe they are ſubject to the action of the party grieved, for he hath no other remedy. [c] The Lord Chancelor or Lord Keeper upon Complaint made unto him in writing hath authority to grant the ſaid Commiſſion.

[b] Lib. 8. f. 121. Int' Cure & Delabar.

[c] 13 Eliz. cap. 7. who may grant the Commiſſion.

*Three qualities of every of theſe Commiſſioners.

The law hath provided that theſe Commiſſioners ought to have *3 qualities, viz. wiſdome, honeſty, and diſcretion; which if it be obſerved, it is the beſt means for the due execution of the ſaid ſtatute, and the life of theſe laws doth conſiſt in the due execution thereof: and for ſuch Commiſſioners if any Action ſhall be brought againſt them, &c. for doing of any thing by force of the ſaid ſtatutes, they may plead generally, and not to be driven to any ſpeciall pleading.

Generall pleading. 1 Jac. cap. 15. 21 Jac. cap. 19.

They have power to examine the offender upon oath, and after he be declared a Bankrupt, to examine his wife upon oath, and to examine witneſſes alſo upon oath. See the ſtatute. And they have power to break any the Houſes, Chambers, Warehouſes, &c. Trunks and Cheſts of ſuch offenders. See the other parts of this Act of 21 Jacobi, which are plainly and effectually expreſſed, and need not here to be recited.

* Lib 2. fo. 25, 26 Cullamors caſe. Lib. 8. fo. 98. Baſpoles caſe. Ib. fol. 121. Int' Cutt & Delabar.

For the expoſition of the ſaid ſtatute of 13 Eliz. *See in my Reports lib. 2. fo. 25, 26. Cullamers caſe. Lib. 8. fo. 98. in Baſpoles caſe, & ibid. fo, 121. inter Cutt & Delabar.

CAP. LXIV.

Commiſsioners for examination of Witneſſes.

FOraſmuch as the Court of Star-Chamber, the Chancery in caſes of equity, the Exchequer Chamber in caſes of equity, the Court of Wards and the Duchy of Lancaſter doe proceed upon witneſſes examined before Commiſſioners, or in Court before the Examiners, it ſhall be neceſſary (as a matter of great importance) to ſay ſomewhat of the power, authority, and duty of the ſaid Commiſſioners and Examiners, and incidently of witneſſes.

See li 9 fo. 70, 71. Peacocks caſe, for this and ſome of the caſes following.

The Commiſſioners, albeit named by the parties reciprocally, ought to ſtand indifferent, and doe their uttermoſt endeavour to find out by due examination the whole truth, and to ſuppreſſe no part thereof; for their authority is to that end meerly and wholly from the King by force of his Commiſſion.

Lib. 9. ubi ſup.

Neither Commiſſioner nor examiner are ſtrictly bound to the letter of the Interrogatory, but ought to explain every other matter or thing which riſeth neceſſarily thereupon, for manifeſtation of the whole truth concerning the matter in queſtion.

Lib. 9. ubi ſup.

Neither Commiſſioner nor Examiner ought to diſcover to either of the parties or to any other, any of the depoſitions or any part of them, which they have taken before publication be granted.

Lib 9. ubi ſupra.

Neither Commiſſioner nor Examiner after the Examination begun, ought to confer with either party touching the examination, or take new inſtructions concerning the ſame.

Aug. *Serm.* 28. *de verbis Apoſtoli. Iurare eſt jus veritatis Deo reddere.*

Azo. *Iusjurandi eſt affirmatio vel negatio, religione adhibita.* See the third part of the Inſtitutes cap. Perjury.

Foraſmuch as the witneſſe by his oath, which is ſo ſacred, as he calleth Almighty God (who is truth it ſelf and cannot be deceived, and hath knowledge of the ſecrets of the heart) to witneſſe that which he ſhall depoſe; it is the duty both of the Commiſſioner and the Examiner gravely, temperately, and leiſurely to take the depoſition of the witneſſe, without any menace, diſturbance, or interruption of them in hinderance of the truth, which are grievouſly to be puniſhed. And after the depoſitions taken, the Commiſſioners and Examiners ought to read the ſame diſtinctly to the witneſſes, and ſuffer them to explain themſelves for the manifeſtation of the whole truth. And it is ſafe for the Commiſſioner and Examiner that the witneſſes ſubſcribe their names or marks to the Paper-booke, but they muſt be certified in Parchment.

And

And albeit the Commiſſioners be not equall in ſtate or degree, yet are they all of equall power and authority: for, as it hath been ſaid of old, that there might be priority, but no ſuperiority amongſt Commiſſioners.

Interrogatories ought to be ſingle and plaine, pertinent to the matter in queſtion, and in no ſort captious, leading, or directory.

In ſome caſes the Courts of the Common law doe judge upon witneſſes, but they muſt ever give their teſtimony viva voce; * **as in dower, if the iſſue be whether the husband be alive or no, &c.**

Witneſſe **is derived of the Saxon Verb** Weten. *i.* Scire, Quia de quibus ſciunt teſtari debent, & * omne ſacramentum debet eſſe certæ ſcientiæ. **In Latin** Teſtis à teſtando; & teſtari eſt teſtimonium perhibere: unde Regula juris, Plus valet unus oculatus teſtis, quam auriti decem: Teſtis de viſu præponderat aliis.

[a] **An Oath ought to be accompanied with the fear of God, and ſervice of God for advancement of truth,** Dominum Deum tuum timebis, & illi ſoli ſervies, & per nomen illius jurabis.

Bracton **ſaith that an Alien born cannot be a witneſſe: which is to be underſtood of an alien Infidell:** [b] **for the Biſhop of Roſſe being a Scot born, was admitted to be a witneſſe, and ſworn** Anno 14 Eliz. **in the caſe of the Duke of Norfolk by the opinion of the Juſtices aſſiſtants.** [c] Teſtis falſus non erit impunitus.

Nocte diéque ſuum geſtat ſub pectore teſtem:

His Conſcience alwayes gnawing and vexing him. [d] Vox ſimplex nec probationem facit, nec præſumptionem inducit.

[e] Teſtium numerus ſi non adjicitur, duo ſufficiunt.

Jurato creditur in judicio.

[f] Teſtibus deponentibus in pari numero dignioribus eſt credendum.

[g] Teſtmoignes ne poent teſtefie le negative, mes laffirmative.

[h] Allegans contraria non eſt audiendus, verum vero conſentiens eſt falſum nec vero nec falſo.

Juramentum eſt indiviſibile, & non eſt admittendum in parte verum, & in parte falſum.

[i] Allegans ſuam turpitudinem non eſt audiendus.

Judex non poteſt eſſe teſtis in propria cauſa.

Jusjurandum inter alios fact' nec nocere, nec prodeſſe debet.

Facultas probationum non eſt anguſtanda.

De crimine in Lupanari commiſſo, lupanares teſtes eſſe poſſunt.

Qui prodit in ſcenam mercedis ergò, infamis eſt.

Witneſſes ought to come to be depoſed untaught, and without inſtruction, and ſhould wiſh the victory to the party that right hath, and that Juſtice ſhould be adminiſtred: and ſhould ſay from his heart, Non ſum doctus, nec inſtructus, nec curo de victoria, modo miniſtretur Juſtitia. **See** Britton 134, 135.

* 8 H. 6. 13. 2 E. 2. triall 46. &c. Dier 2 Eliz. 185. 13 Eliz. 306.

¶ *Of witneſſes.* Additions to the 1 part of the Inſtitutes. Sect. 1. fo. 6. And to the third part of the Inſtitutes cap. Perjury.

* 12 Aſſ. 12. 23 Aſſ. 11. 11 Aſſ. p. 19.

[a] Deut. 6. 13.

[b] 16 Januarii 14 Eliz.

[c] Prov. 19.

[d] Bract. lib. 5. fo. 400. b. 2 H. 7. Kelw. 96. a. b.

[e] Bract. lib. 5. 359.

[f] Vid. 2 E. 3. triall 45.

[g] F. N. B. 106, 107.

[h] 16 E. 4. 10. 2.

[i] Trin. 13 E. 1. in Com. Banco. Rich. de Raynhams caſe.

Hiſtriones Mercenarii.

CAP. LXV.

Curia curſus Aquæ apud Graveſend.

Of this Court, and others like, which are in private, we intend not to treat, for that the labour herein were infinite, and ſerveth nothing for the publick, whereat our principall aime hath be en.

CAP. LXVI.

The Kings Swanheard.

What authority the Kings Swanheard hath, being of ancient time by his Office Magiſter deductus Cygnorum, you may reade Rot. Patentium Anno 11 H.4. part. 1. m. 14, Rot. Pat. 30 E. 3. part 1. m. 20. and Lib. 7. fo. 15, &c. Le caſe de Swannes; but Court he hath not: No Fowle can be a * ſtray but a Swan.

So likewiſe there is an ancient Officer of the Kings Alneger of the Kings gift being before any ſtatute: As taking one example for many. [a] In 14 E.1. Sir Thomas Darlington was by the Kings Letters Patents Alneger of Broad Cloth, and had a fee of the King for the exerciſe of his Office; For the fee that he had of the Subject was (as it ought to be) by Act of Parliament. 27 E.3. St. 1. cap.4. [b] Alneger of Aulne in French, and that of ulna, ulnator. See before concerning the Alnaging of new Draperies, Cap. Of the High Court of Parliament, pag.31.

Rot. Pat. 16 R. 2. part 1. m. 39.

* Tr. 33 E. 1. Eſſex coram rege. Rot. 124. 7 H. 6. &c.

¶ *The Kings Alneger.*

[a] Rot. Pat. 14 E. 1. Tho. Darlington *Militi.* This appeareth alſo by the ſtatutes themſelves. 25 E. 3. cap. 1. ſtat. 4. 27 E. 3. ſtat. 1. cap. 4. 3 R. 2. cap. 17 R. 2. cap. 2. & 5. 1 H. 4. cap. 13. 11 H. 4. 6. 13 H. 4. 4. 11 H. 6. 1. 31 H. 6. 5. 4 E. 4. 1. 8 E. 4. 1. R. 3. Rot. Clauſ. 17 R. 2. m. 14.

[b] The derivation of Alneger.

CAP. LXVII.

The VVardens Courts in the East, VVest, and middle Marches adjoyning to Scotland.

23 H.8.cap.16.
31 H.6.cap.3.
8 E.4.cap.2.
22 E.4.cap.8.

THey proceeded according to the Law called the March Law, or Borders Law, but their jurisdiction was increased by Act of Parliament. The limits of their jurisdiction was within the Marches, which were confined to the Counties of Northumberland, Cumberland, Westmerland, and the Town of Newcastle upon Tine in the County of York.

4 H.7.cap.7.
23 H.8.cap.16.
31 H.6.cap.3.

For the word [Marches,] see before Cap. President and Councell of Wales.

But since King James was Monarch of both Kingdomes, the batable grounds on both sides are become quiet, and so peaceable, as all the said Courts in the East, West, and middle Marches are vanished, and hostile laws on both sides by authority of Parliament in either of the Kingdoms repealed. See the said Statute of 4 Jacobi. See the First part of the Institutes. Sect. 3.

4 Jac.cap.1.

CAP.

CAP. LXVIII.

Of *Callais*, or *Callis*, *Caletum*.

Rot. Par. 50 E. 3. nu. 211, 212. 6 H. 6. nu. 41. See the ſtatute of 27 H. 8. concerning good lawes and orders for Callis and the Marches thereof and 1 H. 7. cap. 3.

THis ſtrong Port Town, the famous and flouriſhing ſtaple, and vent of Engliſh commodities was holden and kept by the ſpace of 211 yeares by 11 ſeverall Kings, viz. E. 3. R. 2. H. 4. H. 5. H. 6. E. 4. E. 5. R. 3. H. 7. H. 8. E. 6. and holden and loſt by King Philip and Mary the firſt Queen regnant of this Realm, the Lord Wentworth then Deputy there.

It was governed by Engliſhmen and by Engliſh laws, ſome particular cuſtomes excepted. [b] And of a judgement given there a Writ of Error did lye returnable into the Kings Bench. [c] Before the ſtaple at Callais, it was kept at Bruges in Flanders.

[b] 21 H. 7. 33. 11 H. 8. Kelw. 202. b. Par. 3. R. 2. nu. 48.

[d] The children born there were inheritable in England and ſo declared by authority of Parliament.

[c] Par. 15 E. 3. 2 part. Parl. 9 R. 2. nu. 4.

[e] And there the King had his Mint in ſuch manner as in the Tower of London. Certaine it is that riches followed the ſtaple whereſoever it was kept.

[d] 42 E. 3. cap. 10. Lib. 7. in Calvins caſe.

[f] And it could not be appointed in any place but by Act of Parliament.

[e] Rot. Parl. 9 R. 2. nu. 4.

[g] The ſtaple being at Callais, upon all rodes forth of the Town by the Captain, the Mayor of the ſtaple furniſhed him forth of Merchants and their ſervants to the number of 100 Bill-men, and 200 Archers without any wages. And yet it appeareth in the Parliament Roll of 2 R. 2. nu. 15. that Callais coſt the King yearly twenty thouſand pounds.

9 H. 5. ſtat. 2. ca. 5.

[f] 1 R. 2. nu. 37.

[g] Parl. 50 E. 3. nu. 209.

See the Parliament Roll of 50 E. 3. nu. 211, 212. for the Mayors Courts, &c. and Liberties, and Franchiſes, &c. there. Many Acts of Parliament have been made concerning this Town, and the ſtaple therein, which need not here to be recited, only we thought it not good totally to pretermit it, becauſe the Kings right remains to it, and it may hereafter be reſtored (which is ſo much deſired) to the right owner.

CAP.

CAP. LXIX.

Of the Iſle of Man, *Inſula Euboniæ, modo Mannæ*, and of the Law and Juriſdiction of the ſame.

This Iſle hath been an ancient Kingdome, as it appeareth in li. 7. in Calvins caſe, which need not here to be recited. And yet we find it not granted or conveyed by the name of a Kingdome, ſed per nomen Inſulæ, &c. cum patronatu Epiſcopatus. He hath the Patronage of the Biſhoprick of Sodor, which is a viſible mark of a Kingdome; albeit of ancient time the Archbiſhop of Canterbury was Patron of the Biſhoprick of * Rocheſter, and the Earl of Glouc' of the Biſhoprick of Landaf. Vide Lib. M.S. in Recept. Scaccarii fo. 166. & Lib. Parliam. in Turri London Temps E. 1. fo. 19. 21.

Walſ. pa. 387. Lib. 7. fo. 21. in Calvins caſe.

* Rot. Cart. 16 Johan. m. 6.

William le Scrope emit de domino Willielmo de Monte acuto Inſulam Euboniæ, (*i.* Mannæ:) Eſt nempe jus ipſius Inſulæ ut quiſquis illius ſit dominus Rex vocetur, cui etiam fas eſt Corona aurea coronari.

Anno Dom. 1393 Walſ. An. 17 R. 2.

Corona aurea.

The Lord Scrope forfeited the ſame to H. 4. for High treaſon. King H. 4. granted the ſame to Henry Earl of Northumberland in theſe words. Rex, &c. De gratia noſtra ſpeciali dedimus & conceſſimus Henrico Comiti Northumbriæ Inſulam, Caſtrum, * Pelam, & Dominium de Man, ac omnia inſulas & Dominia eidem Inſulæ pertinen' quæ fuer' Willielmi le Scrope Chivalier defuncti, quem in vita ſua Conqueſtati fuimus, & ipſum ſic Conqueſtatum decrevimus, & quæ ratione Conqueſtus illius tanquam Conqueſtata cepimus in manum noſtram. Quæ quidem Conqueſtum & Decretum in præſenti Parliamento noſtro de aſſenſu Dominorum Temporalium in eodem Parliamento exiſtentium quoad perſonam præfati Willielmi, ac omnia, terras, tenementa, bona, & catalla ſua tam infra regnum noſtrum quam extra ad ſupplicationem Communitatis regni noſtri affirmata exiſtunt, &c. Habenda & tenenda eidem Comiti & hæredibus ſuis, &c. per ſervic' portandi diebus Coronationis noſtræ & hæredum noſtrorum ad ſiniſtrum humerum noſtrum & ſiniſtros humeros hæredum noſtrorum per ſeipſum aut ſufficientem & honorificum deputatum ſuum illum gladium nudum quo cincti eramus quando in parte de Holdernes applicuimus, vocatum *Lancaſter Sword*, durante proceſſione & toto tempore ſolemnizationis Coronationis ſupradictæ.

Of the quality of him, See Walſ. Ubi ſupra. Rot. Pat. 1 H. 4. Rot. 2. Bundello 2. parte 5. m. 36.

* A Pele or Pile, a fortreſſe in a ſmall Iſle belonging to the Iſle of Man.

Nota, the title of the King by Conqueſt is affirmed by Parliament.

In this little Kingdome there are 2 Caſtles, 17 Pariſhes, 4 Market towns, and many Villages, and in that Iſle there is a Biſhoprick, as hereafter ſhall be ſhewed.

Anno 5 H. 4. the ſaid Henry Earl of Northumberland was attainted of treaſon, and by Act of Parliament 1 Martii, 7 H. 4. it is enacted that the King ſhould have the forfeiture of all his lands and tenements. And afterwards in 7 H. 4. the King granted the Iſle of Man unà cum Patronatu Epiſcopatus to Sir John Stanley for life: and after in the ſame year he granted the ſame Iſle unà cum Patronatu Epiſcopatus, to the ſaid Sir John Stanly and to his heirs; Tenend' de Rege hæredibus & ſucceſſoribus ſuis per homagium ligeum: Reddendo nobis duos Falcones ſemel tantum, *viz.* immediatè poſt homagium hujuſmodi fact': Et reddendo hæredibus noſtris regibus Angliæ duos Falcones diebus Coronationis eorundem hæredum noſtrorum pro omnibus aliis ſerviciis, conſuetudinibus, & demandis, adeo libere, plenè & integrè ſicut Willielmus Scrope Chivalier vel aliquis alius, &c.

Rot. Pat. 7 H. 4. parte 2. m. 18. Cum patronatu Epiſcopatus.

This Sir John Stanley had iſſue Sir John Stanley Knight, who had iſſue Sir Henry Stanley Lord Chamberlain to King H. 6. who created him Lord Stanley, who had iſſue George, who had iſſue Thomas, whom King H 7. created

Earl

Earl of Derby to him and the heirs males of his body, who had iſſue Thomas, who had iſſue Edward, who had iſſue Henry, who had iſſue Ferdinando and William. Ferdinando had iſſue Anne, Frances, and Elizabeth, and died without iſſue male: And between theſe daughters being heirs generall, and William Earl of Derby being heir male, queſtion was moved concerning the title of the Iſle of Man: which by Queen Elizabeth was referred to the Lord Keeper Egerton, and to divers Lords of the Councell, and to Popham Chief Juſtice of England, Anderſon Chief Juſtice of the Common Pleas, & Peryam Chief Baron, Who Trin. 40 Eliz. upon hearing of the Councell of both ſides, and mature deliberation, reſolved theſe Five points. 1. That the Iſle of Man was an ancient Kingdome of it ſelf, and no part of the Kingdome of England. 2. They affirmed a caſe reported by Kelw. Anno 14 H. 8. to be law, viz. Mich. 14 H. 8. an office was found that Thomas Earl of Derby at the time of his death was ſeiſed of the Iſle of Man in fee; whereupon the Counteſſe his wife, by her Councell, moved to have her Dower in the Chancery: but it was reſolved by Brudnell, Brook, and Fitzh. Juſtices, and all the Kings Councell, that the office was meerly void, becauſe the Iſle of Man was no part of the Realm of England, nor was governed by the law of this Land, but was like to Tourny in Normandy, or Gaſcoign in France, when they were in the King of Englands hands, which were meerly out of the power of the Chancery, which was the place to endow the widow of the King, &c. 2. It was reſolved by them that the ſtatute of W. 2. De donis conditionalibus, nor of 27 H. 8. of Uſes, nor the ſtatutes of 32 or 34 H. 8. of Wills, nor any other generall Act of Parliament did extend to the Iſle of Man for the cauſe aforeſaid, but by ſpeciall name an Act of Parliament may extend to it. 3. It was reſolved that ſeeing no office could be found to entitle the King to the forfeiture of treaſon, that the King might grant by Commiſſion under the Great Seal to ſeiſe the ſame into the Kings hands, &c. which being done and returned of Record is ſufficient to bring it into the Kings ſeiſin and poſſeſſion, and into charge, &c. 4. That the King might grant the ſame under the Great Seal, becauſe he cannot grant it in any other manner. And herewith agreeth divers grants under the Great Seal of this Iſle, [b] viz. 4 Junii, 18 E. 1. Rex E. 1. conceſſit Waltero de Huntercombe, &c. Rex E. 2. conceſſit Petro de Gaveſton, &c. 1 Maii, 5 E. 2. Gilberto Magaskill, and in the ſame year granted Henrico de Bello monte Inſulam prædictam cum omni Dominio & Juſtitia regali pro termino vitæ, &c. 5. It was reſolved that a fee ſimple in this Iſle paſſing by the Letters Patents to Sir John Stanley and his heirs, is deſcendible to his heirs according to the courſe of the Common law, for the grant it ſelf by Letters Patents is warranted by the Common law in this caſe: and therefore if there be no other impediment, the Iſle in this caſe ſhall deſcend to the heirs generall, and not to the heir male; as the grand Seigniories and Connots in Wales were impleadable at the Common law, but the lands holden of them by the cuſtomes of Wales, &c. Which reſolutions we have thought good to report, becauſe they are the beſt directions that we have found, both in theſe, and for the like caſes.

Vide 33 H. 8. c. 6. a proviſo for the ſubjects of the Iſle of Man. 14 El. cap. 5.

[a] In Turri Lond' 3 Junii. 6 H. 4. ſuch a Commiſſion under the Great Seal was granted to Sir John Stanley, and William Stanly, &c. to ſeiſe, &c. in this very caſe.

[b] In tur' Rot. Pat. 18 E. 1. &. Anno 9 E. 2.

By theſe Letters Patents it appeareth, that Simon Montacute had intruded into and occupied the ſaid Iſle in noſtri exheredationem, for which he was attached to anſwer the ſame in the Kings Bench at the ſuit of the King, but what proceeded thereupon we yet find not.

Rot. Pat. 2. Apr. 6 E. 2.

But now let us come to their Laws, and Juriſdiction of this Iſle, the like whereof we find not in any place. Their Judges they call * Deemſters, which they chooſe out of themſelves. All controverſies they determine without proceſſe, pleading, writing, or any charge or expence at all. If any caſe be ambiguous and of greater weight, it is referred to 12, which they call Claves Inſulæ, the keyes of the Iſland. They have Coroners (quos Annuos vocant) who ſupply the office of a Sheriff.

*A Dema a Saxon word for a Judge. *Giraldus*: *ſunt duo Judices in Inſula Mannia (olim Ewania nuncupata) qui de litibus ibidem emergentibus cognoſcunt.*

But albeit this be ſo, yet when this Iſle was in the Kings hands, if any injuſtice or injuries were done to any of his ſubjects there, the King might grant

a Commiſſion for redreſſe thereof: the like whereof we finde, Rot.Pat. Anno 20 E.1. in theſe words; Rex dilectis & fidelibus ſuis Nicholao de Segrave ſeniori, Osberto de Spaldington, & Johanni de Suthewell, Salutem. Sciatis quod aſſignavimus vos Juſticiarios noſtros ad querelas omnium & ſingulorum de Inſula de Man ſe conqueri volentium de quibuſcunque tranſgreſſionibus, & injuriis eis per quoſcunque tam balivos & miniſtros noſtros quam alios in prædicta Inſula illatis audiend & terminand', & ad plenam & celerem Juſtitiam partibus inde faciend ſecundum legem & conſuetudinem partium illarum. Et ideo vobis mandamus, quod ad certos dies & loca quos, &c. in Inſula prædicta querelas, &c. audiatis & terminetis in forma prædicta facturi, &c. Salvis, &c. Mandavimus enim Cuſtodi noſtro Inſulæ prædictæ; quod ad certos, &c. in Inſula prædicta venire fac' coram vobis tot & tales, &c. In cujus, &c. Teſte Rege apud Berewick, 15 die Julii.

In the Margent, thus, *De querelis hominum Inſulæ de Man audiend' & terminand'*

Nota, ſecundum legem & conſuetudinem Inſulæ de Man.

So as albeit the Kings writ runneth not into the Iſle of Man, yet the Kings Commiſſion extendeth thither for redreſſe of injuſtice and wrong: but the Commiſſioners muſt proceed according to law and juſtice of the Iſle. They have peculiar Laws or Cuſtomes; for example: If a man ſteal a Horſe or an Oxe, it is no Felony, for the offender cannot * hide them, but if he ſteal a Capon, or a Pigge he ſhall be hanged, &c. Upon the ſale of a Horſe or any contract for any other thing, they make the ſtipulation perfect, per traditionem ſtipulæ. Nota, the true derivation of ſtipulation. And as they have peculiar Lawes, ſo have they a proper Language.

* They have no Woods. 12 H.8.fo.5.a.

This Iſle hath a Biſhop inſtituted by Gregory the Fourth Biſhop of Rome, and he is under the Archbiſhop of York, but hath neither place nor voice in the Parliament of England. In hac Inſula Judex Eccleſiaſticus citat, definit, & infra Octo dies parent, aut carceri intruduntur.

Epus Soborenſis.

The Inhabitants of this Iſle are religious, induſtrious, and true people without begging or ſtealing.

CAP. LXX.

Of the Iſles of Jerſey *alias* Gearſey, *olim Cæſarea*, and Garnſey, *olim Saruia*, and of the law, and Juriſdiction of the ſame.

Jerſey hath 12. Pariſhes. Garnſey 10.

BOth theſe Iſles did of ancient time belong to the Dutchy of Normandy; but when King H. 1. had overthrown his elder brother Robert Duke of Normandy, he did unite to the Kingdome of England perpetually the Dutchy of Normandy together with theſe Iſles: and albeit King John loſt the poſſeſſion of Normandy, and King H. 3. took money for it, yet the Inhabitants of theſe Iſles with great conſtancy remained, and ſo to this day doe remaine true and faithfull to the Crown of England; And the poſſeſſions of theſe Iſlands being parcell of the Dutchy of Normandy, are a good ſeiſin for the King of England of the whole Dutchy.

Concerning the Judicature and Cuſtomes of theſe Iſles whereat we principally aim, it appeareth by the Kings Records in the Tower, Quod Rex Johannes conſtituit 12 Coronatores juratos ad Placita & Jura ad Coronam ſpectantia cuſtodienda, & conceſſit pro ſecuritate Inſularum, quod Balivus de cætero per viſum Coronatorum poterat placitare ſine brevi de nova diſſeiſina facta infra annum, de morte anteceſſorum infra annum, de dote ſimiliter infra annum. **And for the moſt part they proceed according to the Cuſtomes of Normandy.**

Paſch. 17 E. 2. Coram rege Rot. 67. Ierſey.

Drugo Barentyne dicit quod 40. Añ eſt tempus extra memoriam ſecundum conſuetudinem partium illarum.

2 E. 3. fo. 5. b. The Abbot of the Mount of S. Mich. caſe.

King E. 3. aſſigned Hen. de Guldeford and others, Juſtices Errants in the Iſles of Garnſey and C. by his Commiſſion to enquire if he had right in the Manor of C. &c. and there it appeareth, that they demanded adviſement of the men of the Iſles learned in their cuſtomes, who informed them of the cuſtomes of the Iſles, which the Juſtices followed, and there it appeareth that if the information was againſt the laws of the Iſles, they may be holpen by the laws of the ſame. See the Book.

Rot. Clauſ. 9 E. 3. & 25 E. 3. Mich 41 E. 3. Coram rege Rot. 109. Ierſey in placito tranſgreſ.

Quod in Cuſtumis & aliis rebus tanquam indigenæ & non alienigenæ tractentur, &c. Quod juratores in Inſula, &c. non protrahunt judicia ſua ultra unius anni ſpacium.

An Action of treſpaſſe was brought by A. in the Kings Bench for a treſpaſſe done by B. in the Iſle of Jerſey: whereupon in the Record this Entry was made. Et quia negotium prædictum in Curia hic terminari non poteſt, eo quod Juratores Inſulæ prædæ coram Juſticiariis hic venire non poſſunt, nec de jure debent, nec aliqua negotia de Inſula prædicta emergentia non debent terminari niſi ſecundum conſuetudinem Inſulæ prædictæ, Ideo totum recordum negotii mittatur in Cancellariâ domini regis, ut inde fiat [b] commiſſio domini regis, cui vel quibus domino regi placuerit ad negotium prædictum in Inſula prædicta audiend' & terminand' ſecundum conſuetudinem Inſulæ prædictæ.

[a] Secundum conſ. Inſulæ præd. [b] Mic. 6 H 8. 17. b. Kelw. to the Bayliff and Iurates of Ierſey Lib. 7. fo. 20, 21. in Calvins caſe. [c] Regiſt. fo. 22.

By this it appeareth, that albeit the Kings writ runneth not into theſe Iſles, yet his Commiſſion under the Great ſeal doth, but the Commiſſioners muſt judg according to the Laws and Cuſtome of theſe Iſles.

[d] Theſe little Iſles of Serk and Aureny doe lye between and neer the other, & were parcell alſo of the Duchy of Normandy.

[c] De Attornato generali in Inſulis de Gernſey, Jerſey, [d] Serk & Aureney fac' virtute Brevis domini Regis. Rex omnibus Balivis & fidelibus ſuis in Inſulis de Gernſey, Jerſey, Serk & Aureney ad quos, &c. Sciatis, &c. in quibuſcunque curiis noſtris Inſularum earundem, &c. poſt adventum ipſius A. in Inſul' prædict' ſi contingat

contingat ipſum A. interim venire ad partes illas. Teſte, &c. They are not bound by our Acts of Parliament, unleſſe they be ſpecially named. Vid. 33 H. 8. c. 6.

The King hath granted to the men of the Iſles of Gerneſey, Serk and Arreney, that they during the ſpace of 8 years ſhall be free of all manner of Tols, Eractions and Cuſtomes within the Realm as his Liegemen and Denizens. Rot. Par. 14 R. 2. nu. 30.

Inſulani petunt, quia ſunt in mari conſtituti, quod non ulterius extra Inſulas prædictas proſequerentur ad eorum periculum, & non facile poſſunt ſequi Curias Regis in Anglia.

For the Iſles of Jerſey and Garnſey, ſee Mich. 5 E. 3. coram Rege Rot. 46, Paſch. 17 E. 2. Coram Rege Rot. 67.

Within Garnſey there are ten Pariſhes, one Market Towne being the Port or Haven called S. Peters Port by the Caſtle of Cornet. Jerſey hath S. Albones and Hillary two little Iſlands adjacent, it hath twelve Pariſhes, and four Caſtles.

CAP. LXXI.

De Inſula Vectis or *Vecta*, of the Iſle of VVight.

OF this we ſhall not need to ſay any thing, becauſe it is and ever hath been part of Hamſhire, and ever governed by the Lawes of England, as the other Shires have been: but ſeeing we have named it, we will relate ſome things which we have obſerved.

Firſt, there hath been an ancient Baron, de Inſula, of the Iſle, or Liſle, and of latter times there was a Viſcount of the ſame, which is to be underſtood of the Iſle of Wight: for in the Parliament Rols of E. 2. I find him called de Inſula Vecta.

Secondly, Henry de Beauchamp Earl of Warwick for the ſingular favour which King Henry the Sixt bare to him, crowned him King of Wight: but we could never find any Letters Patents of this creation, becauſe (as ſome doe hold) the King could not by law create him a King within his own Kingdome, becauſe there cannot be two Kings of the ſame place in one Kingdome: And after the ſame King named him Primus Comes totiũs Angliæ. But of this it is truly ſaid: Cum illo novus hic & inſolitus titulus omnino evanuit. Camden.

See the Statute of 4 H. 7. cap. 16. againſt taking of Farms within this Iſle, and the power of Judicature given thereby to the Captain of this Iſle, or his Lieutenant in a certain caſe.

CAP. LXXII.

Of the Iſland called Lindesfarne or Leidisfarne, ſcituate by the River Lied having on the South Eaſtward the Iſland of Farn, and is called the Holy Iſland.

IT hath one Caſtle, one Church, and one Parish, and a ſafe Haven defended by a Block-houſe.

It is called the holy Iſland, for that it being a ſolitary place holy men in times paſt retired themſelves thither for their better, and more devout ſervice of God. It was of ancient time a Biſhops ſeat, which was after tranſlated to Dureſme, and is governed by the law of England.

Farne Iſle. For that this Iſle of Farne hath neither Church nor Town, but onely a Caſtle, I paſſe it (and other like Iſles) over.

CAP.

CAP. LXXIII.

Of the Foreſts, and the Juriſdiction of the Courts of the Foreſt.

FOr the word Foreſta, ſee Domeſday in Glouc' & alibi.

For the derivation and deſcription thereof, and ſome other things concerning the ſame; ſee the Firſt part of the Inſtitutes.

In Latin it is called Saltus or Sylva. And ſo in Domeſday, Sylva eſt in defens', ſcilicet, in Foreſta Regis.

A Foreſt doth conſiſt of 8. things, viz. of Soil, Covert, Laws, Courts, Judges, Officers, Game, and certain Bounds.

* Foreſta eſt nomen collectivum, and by the grant thereof the ſoil, game, and a free Chaſe doth paſſe.

And ſeeing we are to treat of matters of game, and hunting; Let us (to the end we may proceed the more cheerfully) recreate our ſelves with the excellent deſcription of Didoes Doe of the Foreſt wounded with a deadly arrow ſticken in her, and not impertinent to our purpoſe.

Uritur infœlix Dido, totaque vagatur
Urbe furens, qualis conjecta Cerva ſagitta,
Quam procul incautam nemora inter Creſſia fixit
Paſtor agens telis, liquitque volatile ferrum
Inſcius: illa fuga ſylvas ſaltuſque peragrat
Dictæos, * hæret lateri lethalis arundo.

And in another place uſing again the word [ſylva] & deſcribing a Foreſt, ſaith;

Ibat in antiquam ſylvam ſtabula alta ferarum.

King John the 15 of June in the 18. year of his reign at Kummigſmead, aliàs Kyme meade, between Staines and Windſor, granted the like Charter, as Carta de Foreſta is.

And now let us ſet down the Courts of the Foreſt.

Within every Foreſt there are theſe Courts.

1. The Court of the Attachments or the Woodmote Court, this is to be kept before the Verderors every forty dayes throughout the yeare, and thereupon is called the forty day Court. At this Court the Foreſters bring in the Attachments de Viridi & Venatione, and the preſentment thereof, and the Verderors doe receive the ſame, and inroll them, but this Court can onely enquire, and not convict; but it is to be obſerved, that no man ought to be attached by his body for Vert or Veniſon, unleſſe he be taken with the manner within the Foreſt, otherwiſe the Attachment muſt be by his goods.

2. The Court of Regard or Survey of Dogs is holden every third year for expeditation or lawing of Dogs by that Court.

3. The Court of * Swanimote is to be holden before the Verderors as Judges by the Steward of the Swanimote thrice in the year, and the Foreſters ought to preſent their Attachments at the next Swanimote Court, and the Freeholders within the Foreſt are to appear at the Swanimote to make Enqueſts and Juries. [a] And this Court may inquire de ſuperoneratione Foreſtariorum & aliorum miniſtrorum Foreſtæ, & de eorum oppreſſionibus populo noſtro illatis. And this Court may not only enquire, but convict alſo, but not give judgement.

Domeſday in Cō' Glouc' & alibi.

2 Mar. Dier 169.

1 part of the Inſt. Sect. 378. f. 233. a.

Ockham cap. Quod Regis Foreſta. Bracton fo. 231. & 316. Britton fo. 34. Fleta l. 1. c 34, 35.

* 1 pt of the Inſt. Sect. 1. fo. 5. b.

In the Saxons time Foreſts were called *walds*, *unde waldegrave*, i. *præpoſitus Foreſtæ*.

Virgill, *Sylva*, as in Domeſday *Saltus à ſaltando, quia ibi feræ ſaltant.*

* Like to an evill conſcience in the falſe and furious Officer of the Foreſt if any ſuch be.

Carta de Foreſta cap. 16.

The Court of Attachments.

1 E. 3. cap. 8.
7 R. 2. cap. 4.

Cart. de Foreſt. cap. 6.

The Court of the Lawing of Dogs.

Cart. de Foreſt. cap. 8. Of Swanimote.

1 E. 3. ca. 8.
20 E. 3. Aſſis' 442.

Swanimote is derived of *Swein*, that is, *Saxonice Miniſter*, & *Mote*, or *Gemote*, which is, *Curia*, i. *Curia Miniſtrorum Foreſtæ*, ſo called becauſe it is but a preparative for the Juſtice Seat. [a] *Ordinat' Foreſtæ.* 34 E. 1. 34 E. 1. cap. 4.

For

45 E 3.fo.7.

For the Jurisdiction of this Court I find a notable caſe in 45 E. 3. in a writ of treſpaſſe of falſe impriſonment brought againſt I. de W. The Defendant ſaid that he is Foreſter in fee of the Foreſt, and that at a certaine Swanimote it was preſented by the * Foreſters, Verderors, Regarders, and Agiſters that the Plaintiffe had chaſed and taken Deer within the Foreſt, whereupon the Defendant being Foreſter in fee came to the Plaintiffe, and prayed him to find pledges to anſwer the ſame before the Juſtice in Eire in this Country (that is, at the Juſtice Seat) and that to doe the Plaintiffe refuſed, by force whereof he retained him, untill he had performed the ſtatute in that caſe provided, and juſtified the impriſonment. The Plaintiffe replied de ſon tort demeſne ſans tiel cauſe, and the iſſue was received by the Court. And it was ſaid that before the Juſtice in Eire he ſhould have no averment againſt the preſentment of the Foreſters.

* We will hereafter ſhew from whence theſe ſeverall names be derived, and the duty of their ſeverall places.

See Domeſday Warw. Si vero per mare contra hoſtes ibat Rex, vel quatuor batſneias, vel quatuor libras denariorum ei mittebant.

Out of this caſe we doe obſerve 6. concluſions. 1. That the law of the Foreſt is allowed, and bounded by the Common laws of this Realm, and therefore it is neceſſary, that the Judges ſhould know, and be learned in the ſame. 2. That though the Verderors be Judges of the Swanimote, and the Steward but a Miniſter, yet the preſentment in that Court is as well by them as Verderors, as by Foreſters, or Keepers, Regarders, and Agiſters, by the Law of the Foreſt. 3. [b] That a Foreſter or Keeper may arreſt any man that kils or chaſeth any Deer within the Foreſt when he is taken with the manner within the Foreſt, or if the offender be indicted. But then it is demanded, [c] what if a man be ſo impriſoned, & after offer ſufficient pledges, and they are not taken, what remedy for the party, ſeeing there are very ſeldome Juſtice ſeats for Foreſts holden? The anſwer is, that in the Term time he may have ex merito Juſtitiæ a Habeas Corpus out of the Kings Bench, or if he have priviledge, out of the Court of Common pleas, or of the Exchequer or out of the Chancery without any priviledge either in the Term time, or out of the Term in time of Vacation, and upon the return of the writ, he may be bailed to appear at the nert Eir to be holden for the Foreſt, &c. And may alſo be bailed by force of a * writ De homine replegiando directed Cuſtod Foreſtæ, [d] if he be arreſted by the Officers of the Foreſt for hunting, &c. whereof he ſtands indicted or preſented taken with the manner he finding 12. pledges: but if he be adjudged by the Juſtices in Eire, and impriſoned he cannot be bailed by that writ De homine replegiand' directed Cuſtodi Foreſtæ, &c. and [e] if he be unjuſtly proceeded withall there he hath remedy by law, as hereafter, when we treat of the Juſtice Seat, ſhall be declared. And it is to be obſerved, that there is a diverſity between the writ De homine replegiando directed to the Sheriff, for he is reſtrained by the ſtatute of VV. 1. cap. 15. to replevy any man impriſoned for the Foreſt, being taken with the manner or indicted, but this ſtatute extends not to the writ De homine replegiand' directed Cuſtodi Foreſtæ, &c.

See the 2 part of the Inſt. Magna Carta cap. 29.

* Rot. Par. Anno E. 3. nu. Int' petitiones.

[d] See the 2 pt of the Inſt. W. 1. cap. 15. Bracton lib. 3. fo. 154. Flet. lib. 2. c. 2. * F.N.B. 67. a. Regiſter. 1 E. 3. cap. 8.

Regiſt. 80. b. 43 E. 3. 30. a. & b.

The Fourth concluſion is, that the offender may be retained by him untill he hath found pledges to appear before the Juſtice in Eire, becauſe (as hath been ſaid) the Court of the Swanimote hath no power of Judicature, but if he offer ſufficient ſureties, he ought not to be impriſoned.

Conſuetud' & Aſſiſa de Foreſts. Vet. Mag. Cart. parte 2 fo. 29.

5. That this Juſtice in Eire at his Seſſions may by the law of the Foreſt proceed upon the preſentments or verdicts in the Court of the Swanimote, though they be taken in another Court, as the Juſtices in Eire might have done in like caſes, as before in the Chapter of Juſtices in Eire appeareth.

6. Laſtly, Note the iſſue joyned upon the plea of the Foreſter, viz. de injuria ſua propria abſque tali cauſa, and allowed by the Court, and the conſequent thereupon. And thus much for the caſe the Reporter ſaith, that it was ſaid that the party ſhould * not traverſe the preſentment of the Foreſters, Verderors, Regarders, and Agiſters: [f] and herewith agreeth 50 E. 3. and note the preſentment was in that caſe by 36. And herein this diverſity is to be obſerved, that if at the Swanimote the preſentment of the Foreſters be found true by the Jury concerning Vert or Veniſon, the offender ſtandeth thereof convict in law, and cannot traverſe the ſame: but an indictment or preſentment before the

* Nota, the entry is, *Præſentatum, & convictum per Viridar'.*

[f] 50 E. 3. Aſſ. 442. Ordinat' Foreſt. 34 E. 1. Preſentmēt by 36.

Chief

Chiefe Juſtice of the Foreſt at a Court of the Juſtice Seat by a Jury, and not found in the Swanimote, may be traverſed. 8 E. 3. Itinere Pickering 147. a. becauſe it is not preſented but by one Jury. 21 E. 3. 48.

4 This caſe alſo giveth juſt occaſion to ſpeak of the Court of the Juſtice Seat holden before the Chiefe Juſtice of the Foreſt, aptly called in the ſaid Book Juſtice in Eire, for ſo he is, and hath authority & juriſdiction to hear and determine concerning Vert and Veniſon, &c. by force of Letters Patents under the Great Seal, whereof there be two, one for the Foreſt on this ſide of Trent, the other beyond. By which Letters Patents the King doth grant unto him Officium Gardiani Capitalis Juſticiarii ac Juſticiarii ſui Itinerantis omnium & ſingularũ Foreſtarũ, Parcorum, Chacearũ, & Warrennarum ſuarum cum ſuis pertineñ quibuſcunque * ultra Trentam exiſteñ, &c. Dantes & concedentes eidem A. B. plenam authoritatem & poteſtatem tenore prædictarum Literarum Patentium omnia & omnimoda Placita, querelas, & cauſa Foreſtarum, Parcorum, Chacearum, & Warrennarum prædict' tam de Viridi gram, qnam de Venatione, ac de aliis cauſis quibuſcunque infra eaſdem Foreſtas, [a] Parcos, Chaceas & VVarrennas eveniet, ſive emergeñ audiend & determinand': Habend', occupand', gaudend' & exercend' offic' prædict' cum pertiñ per ſe vel per ſufficieñ [b] deputatum ſuum ſive deputatos ſuos ſuffic' durante vita ipſius A.B. &c. *The Juſtice Seat.*

* The like office *Cura Trentam mutatis mutandis.* Note, anciently this great Officer was created by Writ, as other Juſtices in Eire were, but now by the ſtatute of 27 H. 8. ca. 24. he is to be created by Let. Pat. See before Cap. Juſtices in Eire.

[a] This is to be underſtood of Parks, Chaſes & Warrens within the Foreſts, as hereafter ſhall appear.

[b] That is by the ſtatute of 32 H. 8. cap 35.

And this Court of the Juſtice Seat cannot be kept oftner then every third year, and other Juſtices in Eire kept their Courts every ſeventh year. And (as before other Juſtices in Eire) it muſt be ſummoned forty dayes at the leaſt before the ſitting thereof: and one writ of ſummons is to be directed to the Sheriffe of the County, which writ you ſhall find hereafter in this Chapter.

There is another writ of Summons directed Cuſtodi Foreſtæ domini regis vel ejus locum tenenti in eadem, and this writ conſiſteth upon two parts. Firſt, to ſummon all the Officers of the Foreſt, and that they bring with them all Records, &c. Secondly, all perſons which claim any Liberties or Franchiſes within the Foreſt, &c. and to ſhew how they claim the ſame. [c] And this Court or Juſtice Seat hath juriſdiction to inquire, heare, and determine two things. 1. All treſpaſſes within the Foreſt according to the laws of the Foreſts. 2. All the claims of Franchiſes, Priviledges and Liberties within the Foreſt, as to have Parks, Warrens, Viveries, to be quit of aſſerts, and purpreſtures, to cut down his own Woods without view of the Foreſter, &c. Likewiſe claims of Leets, Hundreds, Felons goods, Waifs, Straps, Fugitives, and to kill Hares and other Beaſts of Chaſe within the Foreſt, or to have a Wood infra metas Foreſtæ & extra regardum Foreſtæ, that is to be out of juriſdiction of the Foreſt, and other Franchiſes, Priviledges, Liberties, Immunities, Freedomes, &c. within the Foreſt, whereof you ſhall read excellent matter in the Eire of Pickering in 8 E. 3. Rot. 3. 1. where Guilberd of Acton claimed his Woods extra regardum Foreſtæ, &c. There is another writ of Summons directed Cuſtodi Foreſtæ domini regis vel ejus locum tenenti in eadem, and this writ conſiſteth upon two parts. Firſt, to ſummon all the Officers of the Foreſt, and that they bring with them all Records, &c. Secondly, all perſons which claim any Liberties or Franchiſes within the Foreſt, &c. and to ſhew how they claim the ſame. [c] And this Court or Juſtice Seat hath juriſdiction to inquire, heare, and determine two things. 1. All treſpaſſes within the Foreſt according to the laws of the Foreſts. 2. All the claims of Franchiſes, Priviledges and Liberties within the Foreſt, as to have Parks, Warrens, Viveries, to be quit of aſſerts, and purpreſtures, to cut down his own Woods without view of the Foreſter, &c. Likewiſe claims of Leets, Hundreds, Felons goods, Waifs, Straps, Fugitives, and to kill Hares and other Beaſts of Chaſe within the Foreſt, or to have a Wood infra metas Foreſtæ & extra regardum Foreſtæ, that is to be out of juriſdiction of the Foreſt, and other Franchiſes, Priviledges, Liberties, Immunities, Freedomes, &c. within the Foreſt, whereof you ſhall read excellent matter in the Eire of Pickering in 8 E. 3. Rot. 3. 1. where Guilberd of Acton claimed his Woods extra regardum Foreſtæ, &c.

[c] Cart. de Foreſt. cap. 16. 21 H. 7. 30.

This Chiefe Juſtice may by the ſtatute of 32 H. 8. make his Deputy (Yet all the writs of Sommons ancient and late, are Coram (the Juſtice Itinerant) aut ejus Deputato.) 32 H. 8. ca. 35.

Before any Juſtice Seat be holden, the * Regarders of the Foreſt muſt make their regard by force of the Kings writ, and the regard is obambulare, to goe through and view the whole Foreſt and every Bayliwike of the ſame, ad videndum, inquirendum, imbreviandum & certificandum all the treſpaſſes in the Foreſt: his office extendeth through the whole Foreſt, and every part thereof, to inquire of all offences concerning Vert and Veniſon, and of all concealments of any offences or defaults of the Foreſters, and all other Officers of the Kings Foreſt. He is a miniſteriall Officer, and is conſtituted either by Letters Patents of the King, or by the Chiefe Juſtice at the Juſtice Seat, or to be choſen by writ to the Sheriffe. The duty of this Officer appeareth by the writ hereafter mentioned.

* A *Regarder* is derived of the French word *Regardeire*, that is, to view, or ſee, becauſe he cannot preſent any thing but upon his own ſight and view.

Before a Juſtice Seat there ought to be preparations for the ſame, to the end, To ſpeak once for all, the names of all the Officers from the higheſt to the loweſt, put them in mind of their duty: *Conveniunt rebus homina ſæpe ſuis: Nomina ſunt notæ rerum.*

end, that good ſervice may be done there, & quod Itinera non ſint umbratilia, as taking one or two Examples in ſtead of many.

Breve de Regardo cum artic'.

Rex Vic' Not. Salutem. Præcipimus tibi quod Venire fac' certis die & loco quos ad hoc duxerimus providend' omnes Foreſtarios & Regardatores de [a] Sherwood [1] ad regard' faciend' in Foreſt' prædict' ante advent' Juſticiariorum noſtrorum de Foreſt', [2] & loco regardatorum noſtrorum qui mortui ſunt & infirmi alios eligi fac'. ita [3] quod [b] 12 ſint in quolibet Regard', & nomina illorum imbrevientur. [4] Et Foreſtar' debent jurare quod 12 milites ducent per totam balivam ſuam, ad videndum omnes tranſgreſſiones quæ exprimuntur in [5] ſcriptis [c] capitulorum quæ tibi mittimus, & hoc non omittent pro aliqua re: [6] Debent etiam milites jurare quod facient regard', ſicut debet fieri & ſolet. [7] Et quod ibunt ſicut Foreſtar' eos ducent' ad prædicta videnda. [8] Et ſi Foreſtar' noluerint eos ducere, vel aliquid forisfact' concelare voluerint, ipſi milites non omittent pro illis quin forisfact' illud videant & imbreviari faciant: et hoc pro nulla re dimittant. Et [9] quod Regard' fiat circa Feſt' beati Petri ad Vincula prox' futur'. Teſte, &c.

[a] Foreſt' de Sherwood, i. Limpida Sylva.

[b] Cart' de Foreſt' cap. 7.

[c] 12 Capit. paten. inferius.

In this writ 9. things are to be obſerved.

The 12. Chapters abovementioned are theſe which the Regarders duty is to prepare.

1 Videnda ſunt omnia Aſſarta, &c. **Aſſarts.**
2 Videndæ ſunt omnes Purpreſtur' in boſcis, &c. **Purpreſtures in woods.**
3 Videndæ ſunt omnes Purpreſtur' in terris arabil', &c. **in Arable.**
4 Videnda' ſunt omnia Vaſta boſcorum, &c. **Waſt of Woods.**
5 Videnda' ſunt omnes Boſci domini regis, &c. **The Kings Woods.**
6 Videnda' ſunt omnes Haiæ domini regis, &c. **The Hedges of the King.**

Note, all theſe 11. are to be upon his view, *ſuper viſum*, and in this reſpect may be reſembled to a Coroner, *ſuper viſum al'*.

7 Item omnes purpreſtur' & omnia aſſarta, & omnia vaſta, &c. **Generall words.**
8 Videnda' ſunt omnes Aereæ Auſturcorum, Eſpervorum, Falconum, &c. **Aperies of Haulks.**
9 Videnda' ſunt omnes Forgæ & Mineriæ, &c. **All Forges and Mines.**
10 Videnda' ſunt Portus maris, &c. **The Havens of the Sea.**
11 Videnda' eſt Mel, ſi quid, &c. **Hony.**

12 Item milites debent attentè inquirere in itinere ſuo quis habuerit arcus & ſagitt' vel baliſcas leporarias, burchetas, vel aliquid ingenium ad malefaciend' domino regi de feris ſuis. Baliſta, or Arcubaliſta, **ſignifieth a Crosbow.**

Leporaria, **a harepipe.** Burcheta **of the French word** Berche, **a kinde of Gunne.**

Ordinatio Foreſtæ. 34 E. 1

Imprimis ordinavimus pro nobis & hæredibus noſtris quod de tranſgres' in Foreſtis noſtris de Viridi & de Venatione de cætero fact', Foreſtar' infra quorum balivas hujuſmodi tranſgres' fieri contigerint, præſentant eaſdem ad prox' Swanimotum coram Foreſtar', Viridar', Regardator', Agiſtator', & aliis earundem Foreſtarum miniſtris. Et ſuper præſentationibus hujuſmodi ibidem coram Foreſtar', Viridar', & omnibus aliis miniſtris ſupradictis per ſacram tam militum quam aliorum proborum & legalium hominum de partibus vicinioribus, ubi tranſgreſſiones ſic præſentatæ fuer' non ſuſpectorum, per quos rei veritas plenius inquiratur. Et ſic inquiſita veritate præſentationes illæ per communem concordiam & aſſenſum miniſtrorum prædictorum roborentur & ſigillis ſuis ſigillentur. Et ſi alio modo fuit indictament' pro null' penitus habeatur.

This Ordinance being made by the King onely without Authority of Parliament, albeit it was in affirmance of the Law, did not binde, and therefore was not executed: and that it was but an Ordinance, or Declaration made by King E. 1. it appeareth expreſly by the ſtatuts of 1 E. 3. and by that Act of 1 E. 3. the ſaid Declaration is rehearſed as a law, the obſervation whereof is alſo an excellent preparation for a Juſtice Seat.

1 E. 3. ca. 8. ſtat. 1. F. N. B. 164.

¶ *Viridarius à viridi*, Vert, or Green-hue, for that his office principally concerneth to look to the Vert, or Grene, & to ſee it be maintain'd.

Viridarius **is a Judiciall Officer of the forreſt, and choſen in toll County by force of the Kings writ. His office is to obſerve and keep the Aſſiſes or Lawes of the forreſt, and to view, receive, and inroll the Attachments and preſentments of all manner of treſpaſſes of the forreſt of Vert and Veniſon, & to do equall right and juſtice as well to poore as to rich. All this and much more you may read in**

the

the Oath which he taketh before the Sheriffe. There be moſt commonly four Verderors in every of the Kings Foreſts.

Agiſtator, ſo called, becauſe he taketh beaſts to agiſtment, that is, to depaſture within the Foreſt, or to feed upon the pawnage, and commeth of the French word, Gyſer, to lye, becauſe the beaſts that feed there are there levant and couchant, lying and riſing. And his office conſiſteth in agiſtando, recipiendo, imbreviando, & certificando.

¶ *Agiſtatores*, Conſt. & Aſſ. foreſt. ubi ſup.

And this Officer is conſtituted by the Kings Letters Patents; and of theſe in ſuch Foreſts where there is any pawnage, there be four in number.

Gruarii, (of whom you ſhall reade in Foreſt Records) is derived from the French word Gruyer, which ſignifieth generally the principall Officers of the Foreſt. Et ipſi Gruarii vocantur ad ſimilitudinem eorum qui Aucupio Regis in grues olim præerant.

Gruarii.

See the Conſt. de Norm.

Foreſtarius is taken for a Woodward not only of the King within his Foreſt, but ex vi termini of any ſubject of his Woods whereſoever they lye: which appeareth by a Writ in Bracton in theſe words. Rex Vic' Salut. Scias quod propter deſtructionem quæ facta eſt in boſco & terra quam A. de N. tenet in dotem in tali villa de B. de N. Proviſum eſt in Curia noſtra coram Juſticiariis noſtris, quod idem opponat Foreſtarium ſuum ad prædictum boſcum cuſtodiend', ita quod prædict' A. non habeat in eodem boſco niſi rationabile eſtoverium ſuum ad ardendum & claudendum tantum ſuper eandem terram quam ipſe tenet in eodem, &c.

¶ *Foreſtarius.*

Bracton lib. 4. fo. 316. a. & b. & 231. a.

What in legall underſtanding he is taken for a ſworn Officer miniſteriall of the Kings Foreſt, & his duty appeareth by his oath, which conſiſteth on Five parts. 1. That he ſhall be loyall and true to the Maſter of the Foreſt. 2. That he ſhall truly walk and keep the Office of the Foreſterſhip, and true watch make both early and late both of Vert and Venison. 3. Truly attache and true preſentment make of all manner of treſpaſſes done within this Foreſt to his knowledge, and ſpecially within the keeping of his Baillywick. 4. The Kings counſell, his fellows, and his own, he ſhall truly keep. 5. No concealment make for no favour, meed or dread, but well and truly to behave himſelfe therein.

[a] Officers of the Foreſt ſhall not be ſworn on enqueſts out of the Foreſt,

[a] Ordinat. foreſt. 34 E. 1. cap. 5. Regiſt. 183. F. N. B.

[b] Meſſarius is a Mower or Harveſter, derived à metendo. Fleta lib. 2. cap. 75. meſſor. 30 aſſ.

[b] Aſſiſa & cõſuet. foreſt. 6 E. 1. c. 16.

Theſtylis & rapido feſſis meſſoribus æſtu
Allia Serpyllumque herbas contundit olentes. *Virgil.*

¶ Surcharge of the Foreſt.] Superoneratio Foreſtæ, is when a Commoner in the Foreſt putteth on more Beaſts then he ought, and ſo ſurchargeth the Foreſt. It is taken from the Writ De ſecunda ſuperoneratione paſturæ in the ſame ſenſe when the Commoner ſurchargeth. Where it is ſaid (tempore coronationis Regis Henrici avi, that is, of H. 2.) It is to be known that he was crowned twice, viz. the 20 of December in the firſt year; he cauſed his ſonne Henry to be crowned King the 15 of June in the 16 year of his reign; Henry his ſon died the 11 of June in the 28 year of his reign; after whoſe death King Henry Fitz Empreſſe was crowned again.

Regiſt. & F. N. B. 126. a. e. & c. Surcharge. Mag. Cart. cap. 5.

¶ Deſertum, id quod ab hominibus deſeritur, & feris relinquitur.

¶ Maſura terræ, ſunt in eiſdem maſuris 60 domus plus quam ante fuerunt. Mas de tra, that is, an exchange of land where there is an houſe.

Domeſday, Sudſex Ciceſtr. & ſæpe.

¶ Fugacia ſignifieth a Chaſe, and is all one with Chaſea. See the Charter of Mawde the Empreſſe, ſtiling her ſelfe Anglorum Domina, made to Miles of Gloceſter, creating him thereby Earl of Hereford, wherein towards the end follow theſe words. Præcipio quod hæc omnia ſupradicta teneat de me libere & quiete in boſco & plano, in foreſtis & fugaciis, in pratis & paſturis, &c. Præterea autem concedo, ut in propriis ipſius prædiis quiſque tam in agris quam in ſylvis excitet agitetq; feras; meas autem ne venetur, iis præſertim in locis quos privilegio circumſcripſi meo cum pœna præcipio.

Carta Matildis Imperatricis Miloni de Gloceſt.

Int. leges Canuti cap. 77. Lamb.

That H. 1. made at Woodſtock a Park, which was, ſaith he, the firſt Park in England. But it is out of doubt that there were parks in the dayes of the

Iohannes Roſſus & alii poſt eum.

Deorfald. Falda ferina. Domeſday. Chent. Certh. Ib. parcus ſylvatic' beſtiarum Devonſcoire. Winchelere. Hertfordſcire. Pelinton.

Saxons, which were called Deorfald of two Saxon words of Deor for Deer, and Fald, for a place incloſed with pale, hedge, or wall. And in the Book of Domeſday often mention is made by expreſſe name de Parcis. Parcus beſtiarum. Parcus ſylvaticus beſtiarm.

Haia taken for Parcus of the French word Heye for an incloſure, Rot. Inquiſit. 36 E. 3. in Scacc' de foreſt'.

¶ Haia de Kingeſl.e in Hamſhire.

¶ Hulmus, *i.* Inſula an Iſle. ¶ Bercaria, Vid. 1 part. Inſtit. Sect. 1. ¶ Maſtivus mutulatus is a Maſtiffe expeditated or lawed, and not muſled: for no Dog by the law of the Foreſt ought to be muſled. Mutulatus commeth of the Verbe Demutulo, *i.* demembro. ¶ Biſſa, *i.* Cerva, of the French word Biche, for a Hind. ¶ Mureleges, à legendo mures, of getting of Mice. a Wilde Cat. ¶ Teſſones of the French word Teſſon, for a Gray, Brock, or Badger. ¶ Beſonus of Biſon a French word for a wild Ore.

Ifb. Artic. 11. Camia continet ſpatium octo palmarum in longitudine. Dorſ. clauſ. An. 16 R. 2. m. 30.

¶ Ham, Saxonicè domus, home, ſometime Villa, as Mileham olim Mildham, becauſe the aire was mild and temperate.

¶ Hue and Cry, Huteſium & Clamor, the one being an expoſition of the other, each of them ſignifying crying and ſhowting; verba dolentis. And Hue is derived of the French word huier and crier. But Hue and Cry by the Foreſt law is not to be made for treſpaſſe in Vert, but in Venſon onely. This Hue and Cry cannot be purſued but onely within the bounds of the Foreſt; and the offence muſt be committed within the Foreſt, and not within the purlieu. And this Hue and Cry may be made by any of the Kings Miniſters of the Foreſt, for any of them may arreſt the malefactor, and none can make Hue and Cry but he that may arreſt in that caſe, and cannot. And ſo are the generall words, Si quis viderit, &c. to be underſtood.

Si quis viderit, &c. If any Townſhip or Village follow not the Hue and Cry, they ſhall be amerced at the Juſtice Seat.

* Bract. li. 3. fo. 32.

¶ Taken with the Mayneer, à Manu is in 4 kinds, viz. Dog-drawn, that is, drawing after a Deer which he hath hurt. Stable ſtand, viz. at his ſtanding with any Knife, Gunne, or Bow, or cloſe with Greyhounds in his Leaſh ready to ſhoot or courſe. * Back-bear, that is, carrying away the Deer which he killed. Bloody hand, that is, when he hath ſhot or courſed, and is imbrued with blood.

21 E. 3. 48. a. In Scire fac. Vid. 25 E. 3. fo. 43. Nichol. Gowers caſe. Vid. Regiſt. 263. b. Bfe de inquirendo de libertatibus allocatis.

But what if injuſtice be done at the Juſtice Seat? For example, as if a claim be made of any liberty at a Juſtice Seat, and is there allowed, what remedy hath the party grieved in this caſe? which I doe the rather propound, becauſe I find not this doubt reſolved in any of the readings upon this ſtatute of Carta de Foreſta, or in any that have written of the Foreſt laws. And I find this queſtion reſolved by a notable Book caſe in 21 E. 3. agreeable with the Regiſter and other Books; where the caſe was this. A. & B. before the Juſtices of the Foreſt of Pickering claimed to have within the Wood of E. within the ſame Foreſt a Woodward proper, and alſo to have the windefals in the ſame Wood, which claime was allowed by the ſaid Juſtices, where in truth the ſaid claime was falſe to the diſheriſon of the Commoners there: for that the Commoners within the ſaid Town of E. had the choiſe of the ſaid Woodward, and all the windfals for their reaſonable Eſtovers as belonging to their freehold. Thereupon on the behalf of the Commoners the Record before the Juſtices of the Foreſt was removed by Certiorari, (which in the foreſt law is called a Venire facias Record) into the Kings Bench (which Court is above all Eires) and two of the Commiſſioners, *viz.* Robert de Scarburgh and Robert VVich ſued out a Scire fac' upon the ſaid Record againſt the ſaid A. & B. &c. And they declared upon the ſaid Writ that all the Commoners had the liberties aforeſaid: Exception was taken to the Writ, that the grievance is as well ſuppoſed to others, as to thoſe two which were plaintifes in the Scire fac'. Whereunto it was anſwered, that although the grievance was to others, yet thoſe two that would complain might maintain this ſuit. And if the others be of Record with A. and B. yet theſe two may ſue, and theſe two might have joyned in Aſſiſe. And there it is holden, that if a profit be

be granted to a comminalty out of the Foreſt, the claime ought to be made by them all, but otherwiſe it is within the Foreſt, where every one ſhall have his Action by himſelfe for that which belongs to him; and in the end the Writ was adjudged to be good. But in this caſe ſomewhat is implyed, for by the law of the Foreſt, when a claim is made of any liberty within the Foreſt, although no iſſue be joyned thereupon, yet the entry is, Et quia videtur Juſticiariis quod expediens & neceſſe ad inquirendum ſuper præmiſſis rei veritatem antequam ad allocationem clamei prædicti procedatur, inquiratur inde veritas per miniſtros ejuſdem foreſtæ: and ſometime tam per miniſtros foreſtæ quam per alios liberos & legales homines, at the diſcretion of the Juſtices for the advancement of truth: and accordingly the Foreſters, Verderors, Regarders, and Agiſters doe enquire thereof. * Alſo if a claim be made before the Juſtices of the Foreſt, whereupon there groweth difficulty, or if a demurrer in law be thereupon joyned, the Juſtices may adjourn the ſame into the Kings Bench to be there adjudged, and then the Entry is, Ideo quoad clameum prædict' pro eo quod Juſticiarii prædict' nondum adviſantur de judicio inde reddendo, datus eſt dies eidem H. coram Domino Rege (in tali retorn) ubicunque &c. de audiendo inde judicium, &c. Et dictum eidem H. quod interim ſequatur bre de Venire fac' inde recordum, &c. Poſtea Dominus Rex mandavit præfat' Juſtic' bre ſuum in hæc verba. * Edw. Dei gratia Rex Angliæ, &c. Dilecto & fideli ſuo Ricō de Willowbye ſalutem. Cum vos & ſocii veſtri Juſticiarii noſtri ad placita foreſtæ, &c. tenend' aſſignat' quoddam clameum de diverſis libertatibus per dilectum & fidelem noſtrum H. de Percye coram vobis & ſociis veſtris prædictis in eadem foreſt' fact' propter quaſdam difficultates in eodem clameo content' coram nobis adjornaveritis, ut accepimus, Vobis mandamus quod ſi ita eſt, tunc omnia clamea prædicta nec non recorda & proceſſ. inde coram vobis habita coram nobis ubicunque fuerimus in Anglia ſub ſigillo veſtro ſine dilatione mittatis juxta adjornamentum prædictum hoc bre nobis remittentes. Teſte, &c. Anno 12 E. 3.

* 8 E. 3. Itinere Picker. Henry de Percyes caſe, which depended in adviſement for difficulty four years befor R. de Willowby, and other Juſtices of the Foreſt. Venire fac'. Record. Certiorari.

* A Certiorari before judgement out of the Chancery return'd into the Kings Bench directed to R. de Willowbie (being the ancient primary Judge) onely, becauſe he onely hath the keeping of the Records.

Virtute cujus Brevis clameum prædict', nec non recordum & proceſſ. prædict' mittuntur coram rege ad diem prædict' una cum brevi prædicto.

Poſtea Dominus Rex mandavit præfato R. de W. quoddam aliud bre clauſ. in hæc verba, Edw. &c. dilecto & fideli R. de W. Salutem. Cum vos & ſocii veſtri Juſticiarii noſtri ad placita foreſt' in foreſt' H. com' Lanc' de Pick' in Com' Eborum tenend' aſſign' quædam clam de diverſis libertatibus per dilectum & fidelem noſtrum H. de Percye coram vobis & ſociis veſtris prædict' in eadem foreſt' habend' fact' propter quaſdam difficultat' in eiſdem clameis interveniend' coram nobis adjornaveritis, & quædam alia clamea ſua ſimiliter ibidem de quibuſdam aliis libertatibus fact' allocaveritis, prout accepimus; Nos volentes tam ſuper dictas libertates ſic adjornat', quam ſuper al' allocat' certis de cauſis certiorari, vobis mandamus quod ſi ita eſt, tunc omnia clamea præd' nec non record' & proceſſ. inde coram vobis, & ſociis veſtris prædict' habit' coram nobis ubicunque fuerimus in Anglia ſub ſigillo veſtro ſine dilatione mittatis, & hoc breve, ut hiis inſpectis ulterius fieri faciemus, quod de jure fore viderimus faciend'. T. E. Duce Cornub. Com. Ceſtriæ filio noſtro chariſſimo Cuſtod' Angl' apud Berkhamſteed Primo die Februarii anno regni noſtri 13. Virtute cujus brevis clam' præd' tam adjornat' quam allocat' mittuntur coram Rege una cum bri prædict', &c.

By all which caſes the former queſtion is reſolved, which caſe and conſequents thereupon is worthy of ſerious conſideration.

Nicholas Gower was indicted for that he killed the Kings Game in the Kings Foreſt, when he was the Kings Steward of the ſame, and alſo had taken ranſome for Indictments, which Indictments were removed coram Rege, and the Steward was put to anſwer thereunto. 25 E. 3. 43.

27 E. 1. coram Rege Rot. 13. Wigorn'.

Note the Writ of the Juſtice of the Foreſt retorn' into the Kings Bench.

Breve Juſticiarii foreſtæ. Verſus Godfridum Epiſc. Wigorn.

Ad finem faciend' pro tranſgreſſ. venationis in foreſta de Windeſor

Hugo le Deſpencer Iuſtic' Foreſt' citra Trentam mandavit quoddam Breve ſuum Vic' Wigorn' retorn' coram Domino Rege in craſtino Sancti Johannis Baptiſtæ prox' præterito, &c. in hac verba. Hugo le Deſpenſer Iuſtic' Foreſt' citra Trentam Vic' Wigorn' Salutem. Mandamus vobis quod diſtring' Godfridum Epiſcopum Wigorn' per omnes terras & catalla ſua in balliva veſtra, ita quod nec ipſe, nec aliquis per eum ad ea manum apponat, donec aliud a Domino Rege ſeu à nobis inde habueritis in mandatis. Et quod de exitibus coram Domino Rege reſpondeatis, & quod habeatis corpus ejus coram Domino Rege in feſto Sancti Johannis Baptiſtæ ubicunque tunc fuerit in Anglia, ad finem faciend' pro tranſgreſſione venationis per ipſum facta in foreſta de Windeſore ſicut per legalem inquiſitionem ſecundum Aſſiſam foreſtæ coram nobis apud Windeſore captam plenius nobis conſtat. Et unde eidem Epiſcopo per literas noſtras ex parte Domini Regis alias mandavimus, quod pro fine ſuo inde faciendo veniret coram nobis apud London, ita quod eſſet ibi in craſtino Sanctæ Trinitatis prox' præterito, vel ſufficientem Attornatum ſuum ibidem mitteret ſuam plenam poteſtatem in hac parte habentem: qui ad diem illum coram nobis non venit, nec Attornatum in hac parte miſit ſicut ei ex parte Domini Regis mandatum fuit; Et habeatis ibi hoc Breve. Dat' apud Lugtheburghe die Iovis in Octab' Aſcenſionis Domini Anno regni Regis Edwardi viceſimo ſexto. Ad quem diem Vic' nihil inde fecit, ſed mandavit quod præceperat ballivis libertatis ejuſdem Epiſcopi de Oſewoldeſtowe qui nihil inde fecerunt. Per quod præceptum fuit eidem Vic' quod non omitteret propter prædictam libertatem, quin diſtring' prædictum Epiſcopum per omnes terras, &c. Et quod de exitibus, &c. Et quod haberet corpus ejus coram Rege in Octabis Sancti Michaelis, ubicunque, &c. ad finem faciend', &c. cum Domino Rege pro tranſgreſſ. prædict', &c. Et ſimiliter quia procedi non potuit ad finem capiend' de prad' Epiſcopo, &c. ſine record' prædicti Hugonis Juſtic' &c. de tranſgreſſ. prad' &c. Mandatum fuit eidem Hugoni Juſtic', &c. quod recordum inde coram eo habitum regi mitteret ad præfatum Terminum cum omnibus recordum illud tangentibus. Et Vic' nullum breve retornavit coram Rege ad præfat' Terminum Sancti Michaelis: nec prædictus Hugo Juſtic', &c. aliquod recordum miſit, &c. propter quod, ſicut prius præcept' fuit vic' quod non omitteret propter prædictam libertatem, quin diſtring' prædictum Epiſcopum per omnes terras, &c. Et quod de exitibus, &c. Et quod haberet corpus ejus coram Rege in Octabis Sancti Hilarii ubicunque, &c. ad finem faciend' in forma prædict', &c. Et Vic' retorn' breve, ſed prædictus Hugo Juſtic' nullum recordū miſit. Et ſuper hoc venit quidam Aluredus de Northgrave pro prædicto Epiſcopo, & dicit quod præfatus Hugo Juſtic' &c. diſtringit prad' Epiſcopum per diverſa brevia ſua in Com' Wigorn' & Glouc' ad finem faciend' coram ipſo de eadem tranſgr. & nihilominus paratus eſt ſatisfacere Domino Regi pro prædicto Epiſcopo de prædict' tranſgreſſ. ſecundum recordum prædicti Hugonis, & ſecundum quod Cur' regis conſideraverit, &c. Et quia dictus Hugo Juſtic' nullum recordum miſit per quod procedi poteſt ad finem capiend' de prædicto Epiſcopo, &c. Ideo quoad prædictum Epiſcopum ceſſat diſtr' uſque à die Paſchæ in unum menſem ubicunque, &c. Et dictum eſt prædicto Aluredo quod tunc ſit ibi ad finem faciend' pro prædicto Epiſcopo, vel quod habeat Warrantum de prædicto Hugone Juſtic' quod finem fecit vel finem facere debeat coram prædicto Hugone Juſtic', &c. de tranſgreſſione prædict', &c. Et nihilominus mandatum eſt præfato Hugoni Juſtic', &c. quod Venire fac' recordum prædictum, ut prædictum eſt, coram Rege præfatū terminū, &c.

Procedi non potuit ad finem cap. ſine recordo, &c.

A Certiorari to the Juſtice of the Foreſt for the Record.

Epiſcopus paratus eſt ſatisfacere.

Obſerva

Obſerve well the parts of this Record, and a ready way to help the King to his fines after the Eire of the Foreſt be ended.

On the other ſide it is demanded, what if a man make a juſt and lawfull claime to certain liberties at the Juſtice Seat, and cannot obtain the ſame to be allowed by the Juſtices of the Foreſt, what remedy for him that maketh ſuch claim? [a] Whereunto the anſwer is, that he ſhall have a writ De libertatibus allocandis, directed to the Juſtices of the foreſt, which writ doth appear in the Regiſter.

* Regiſt. 162. and F.N.B. 229.b. & 230.a. & Int' communia de Scaccar' de Anno 14 E.1. de libertatibus allocandis & vide L. Ockh. f.47,48.

[a] And any perſon that is to make any claim may the firſt day of the Eire either make it in perſon or by Atturney, F. N. B. 26.g. And he that appears upon a preſentment or indictment taken before the Juſtices in Eire, and traverſeth the Indictment, may after appear by Atturney. See before Cap. Juſtices in Eire the writ in the Regiſt. 19.a. W.2.cap.10.

[a] 8 E.3. Itinere Pick. 148.a.

[b] And the entry is, A.B. po: lo: ſuo T.B. vel L.N. de omnibus placitis ſeu querelis motis ſeu movendis, & ad omnes libertates calumniand', proſequend', & defendend' durante Itinere iſto: whereby it appeareth in what generality an Atturny may be made.

[b] 8 E.3. Itinere Pick. the caſe of the Prioreſſe of Rocela. Reg. 19.b.

[c] And this agreeth with the Regiſter, fo. 19.b. by 5. kinds of Writs which are worthy of obſervation, viz. [1] Breve de clameo admittend' in itinere per Attornatum primo die itineris, &c. [2] De libertatibus exigendis in Itinere: [3] De Attornat' in omnibus placitis & querelis in itinere, & ad libertates calumniandas: [4] Aliter in omnibus placitis & querelis in Itinere juxta formam ſtat' de Merton cap. 10. Glouc' cap. 8 & W.2.cap. 10. [5] Aliter de Attornatis, &c.

[c] Regiſt. 19.b.

And theſe Writs are to be granted ex merito Juſtitiæ, without any denyall, as well to the Juſtices in Eire of the Foreſt, as other Juſtices in Eire for the admitting of Atturnies. Vid. 2 part of the Inſtitutes W.2.cap.10.

And upon ſearch made I find the like writ beginning, Omnibus Balivis & fidelibus ſuis, &c. in the Eire of Pickering, 19.b. for the Prior of St. Johns of Jeruſalem to make an Atturney before the Juſtices of the Foreſt.

But what if the Juſtice in Eire give an erroneous judgement, &c. what remedy hath the party grieved? He may have a writ of Error out of the Chancery returnable into the Kings Bench, and there Juſtice ſhall be done.

2 E.3. fo. 29. Lib. 9. fo. 28.b. Labbot de Stram Marcellas caſe.

[d] If a man make his claim by grant or preſcription, and he or his Councel miſtaketh his right title in ſome materiall point, ſo as the claim is found againſt him, it is good for him that his true title be found by the ſame verdict ſpecially, for then may the party by petition make a fine and pray licence to make a new claim, and thereunto be ought to be admitted.

[d] 8 E.3. Itin. Pick. fo. 165. the caſe of William of Perſay and Petronilla de Kinthorp.

And concerning claims it is ſpecially to be obſerved, that by the Foreſt law a grant made of a priviledge within the Foreſt to all the Inhabitants being Freeholders within the Foreſt or ſuch other Comminalties not incorporated, is good.

8 E.3. Itin' Pick. fo 22. Itin' Lanc' fo. 4.

[e] If a man make a falſe claim by claiming more then he ought, he ſhall be fined for his falſe claim, but that which he ought to have ſhall not be ſeiſed: As the Prior of York claimed by Charter to have Tithe of all Venſon, tam in carne quam in corio, where he ought to have it in corio, for which he was fined and enjoyed it in carne.

[e] 8 E.3. Itin' Pick. fo. 15. Lanc' f. 64.

In the Eire of Pickering holden before Richard' de Willowby, Robert de Hungerford and John de Hambury Juſtices in Eire for the Foreſt of Pickering, Anno 8 E. 3. a claim was made by Thomas de Pickering and Margaret his wife, *viz.* Habere in dominico boſco ſuo de Loction Woodwardum ad cuſtodiendum Boſcum ſuum, & quod nullus in eo amputet aut proſtrare faciat arborem aliquam ſine voluntate ſua, & quod ipſi in boſco ſuo poſſunt proſtrare & dare pro voluntate ſua arbores virides & ſiccas, & dare & vendere arbores ſuas pro voluntate ſua ſine viſu Foreſtariorum, &c. and preſcribed in the ſame in the right of the ſaid Margaret, where this preſcription was enquired of and allowed to be good in law, but it was found, as to the taking of the trees without the view of the Foreſter, to be untrue.

Pickerings caſe.

* The like preſcription made by Sellinger to take and cut down Timber trees within his own Woods within the Foreſt of Haye in the County of Hereford without

* *In Cur' Scaccar' Coram Edw. Sanders Capital' Bar. & aliis Baronibus tempore R. Eliz.* of the report of Popham Chief Juſtice.

without the view of the Forester, and upon argument and long advisement it was adjudged, that the prescription was good notwithstanding the Ordinance of 34 E. 1. and the statute of 1 E. 3. cap. 2. And the reason was, because that statute was but in affirmance of the Common law of the forest, and against such a statute a man may prescribe. And that 34 E. 1. was but an Ordinance and no Statute, see F.N.B. 167. a. Register. Which judgement was agreeable to Pickerings case abovesaid, and is of great consequence: for the statute of Carta de Foresta, and most of the statutes concerning forests are likewise declarativa antiqui juris; and therefore, as against the Common law, so against them a man may prescribe upon a just and reasonable cause; but if they were introductiva novi juris, then no prescription can be made against them, unless he hath another statute to preserve the liberties.

Constit. & Assis. Forest. ubi sup. A man may claim to have dogs inexpeditate and hounds within the Forest.

And if a man hath a Wood in a forest, and hath no such prescription, the law doth appoint him a meanes to fell both wood and timber, so it be no prejudice to the game, but sufficient is left besides, and that is, by a writ of Ad quod damnum, upon return whereof the King doth licence him, &c.

Regist. 257. a. F.N.B. 226. f. 2 E. 2. tit. 9. Ad quod damnū.

By the Kings commandement under his Signature and Signet, all the Judges were assembled about certain questions concerning his forests of Leicester in the County of Leicester, and of Bowland in the County of Warwick, to be moved to them by the Attorney of the Duchy. And the first question which was moved, was, whether the said forests were forests in name onely, or in law: which being quæstio facti, the Judges could give no answer: but by way of direction they resolved, that if they were forests in law, it must appear of Record, for there be certain incidents inseparable to every Forest, viz. Courts of Record, and Officers of Record, Courts of Record, as Courts of Attachments, Swanimote, and Justice Seats. Officers of Record, as Foresters, Verderers, Regarders, Agisters, &c. who are made (as it appeareth before) by matter of Record, &c. but appellation or naming of them forests in offices, pleadings, grants, or other conveyances, are no proofs, that they be forests in law.

Pasch. 5 Jac. Reg.

Vid Reg. 258. a. Bowland is called Libera Chasea de Bowland.

2. It was resolved by them, that if they be but free Chases and no forests in law, that then the owners of Woods within such Chases may cut down timber or wood growing therein without view of any Officer, or licence of any; but if they cut down so much as they leave not sufficient covert, and brouse wood for the game, they shall be punished at the Kings suit. And so it is if a common person hath liberty of Chase in other mens Woods, the owners of the Wood cannot cut down all the Woods, but leave sufficient for covert and brouse, as hath been accustomed, no more then the owners of Woods in which others have common of Estovers, can destroy the whole Woods, but leave sufficient for the Estovers.

Temps E. 1. trespasse 249. the case is to be understood of a Forest where Foresters (there named) be, for every Forest is a free Chase, but not *è converso*. 43 E. 3. 8.

3. And being demanded whether in the Kings free Chases a man might have common & feeding for sheep, & warren by prescription or grant? It was resolved, clearly they might, but they must not surcharge to the prejudice of the Kings game, but the owner of the soil within such a free Chase cannot erect a Warren without a Charter from the King. And it seemeth to me that by prescription a man may have common for his sheep within the Kings Forest: for, first, I find no authority in our books (that I remember) against it; and that generally a man may common in a forest, it appeareth by Carta de foresta, Cap. 1. 33 E. 1. stat. 5. 34 E. 1. cap. 6. And if for common in general, especially for common appendant so much favoured in law, and particularly for Sheep, as well as for Horses and Mares. 12 H. 3. Common 25. F. N. B. 230. a. And to conclude this point, the Prioresse of Wicham prescribed to have Common in the Forest of Pickering, pro omnibus averiis suis, except' caprellis, before the Justices in Eire in 8 E. 3. Rot. 31. which being found to be true was allowed to her, &c. and such a prescription may have a lawfull beginning by the Kings grant.

Vid. Dier 6 E. 6. fo. 70.

4. That he that hath a Warren within a free Chase may build upon his own inheritance within his Warren a convenient lodge for preservation of his game. And Popham Chief Justice before all the rest of the Judges cited the said case of Selenger adjudged in the Exchequer.

Some

Some queſtion being moved between the Earl of Nott. Juſtice in Eire in all the Kings Foreſts, and the Earl of Dorſet Treaſurer of England, concerning the diſpoſing of the Kings Woods in his Foreſts; for reſolving whereof by the Kings commandement all the Judges of England were aſſembled, who upon conference and mature deliberation reſolved theſe 7. points following.

1. That the Juſtices in Eire, and the Kings Officers within his Foreſt have charge of Veniſon, and of Vert or Green hue for the maintenance or preſervation of the Kings game, and therein of all manner of trees for covert, bruiſe and pawnage. But when need is to ſell ſeaſonable woods within his foreſt, or timber for his Majeſties uſe, the ſame muſt be ſold or taken by force of the Great Seal, or Exchequer ſeal by the view of the Foreſter to the intent that the woods or the timber ſhall not be taken in places inconvenient for the game. But the Juſtice in Eire, or any of the Kings Officers within the Foreſt cannot ſell or diſpoſe of any wood within the Foreſt without Commiſſion: and ſo the Exchequer and the Foreſters have diviſum imperium, the one for the profit of the King, and the other for his pleaſure.

In Baga de Foreſtis in Cuſtodia Rem. Regis 12 E. 2. Com' to ſell the underwood in the Park of Clarendon. 17 E. 2. Com' to ſell Windefals in the Park of Northamp. 28 Com' to ſell wood in Clarendon. Nota, *minuti blaterones quercuum Curli & Curbi in Foreſta de Grovele vend' virtute brevis domini regis. Simile ibidem* 10, 11, 13. & 14 E. 4. *Simile* 17 H. 6. *virtute Literarum Pat.* H. 6.

2. That regularly neither the Court of the Exchequer, nor any of the Kings Officers can diſpoſe of the Kings timber or woods, but it ought to be done by Commiſſion, &c. as is aforeſaid, for the Kings beſt profit.

3. That every man in his own Woods within the foreſt may take Houſebote and Heybote by the view of the Foreſters. The Kings Fermers that have clauſes in their Leaſes to take timber, &c. by view, &c. may take the ſame accordingly: and ſo may Freeholders by preſcription, and Copyholders, which by cuſtome have uſed to take Houſebote, &c. take the ſame by view of the Foreſters, &c. or otherwiſe according to the Cuſtome.

1 E. 3. ſtat. 2. c 2. Conſtit & Aſſ. Foreſt. ubi ſup.

4. It was reſolved, that no Officer of the Foreſt could claime Windefals or Motard trees for their fees by preſcription, becauſe they were once parcell of the Kings inheritance, but they ought to be ſold by Commiſſion, as before it appeareth, for the Kings beſt benefit.

Vid. Itin. Pick. 8 E. 3. Rot. 30. the caſe of William de Perſey and Petronilla his wife.

5. That he, that hath the Herbage, or Pawnage of a Park by the grant or demiſe of the King or any other, cannot take any Herbage or Pawnage but of ſurpluſage over and above the competent and ſufficient Paſture, and feeding of the game: and if the owner of the game ſuffer the game ſo to encreaſe, as there is no ſurpluſage, then he that hath the Herbage and Pawnage cannot put any Beaſts in the Park.

6. That the owner of the Park may divide any competent parcell of the Park with Rail, Pale or Hedge for the feed of the game in Winter, and he that hath the Herbage cannot put any Beaſts therein.

Laſtly, if the Paſture and Pawnage of the Park be but ſufficient to feed the game in Winter and Summer, the owner thereof may drive out the Beaſts of him that hath the Herbage and Pawnage. And thereupon by like aſſent of all the Judges the Court of Exchequer took this order following with ſome reaſonable additions.

Rot. Par. 18 E. 1. fo. 16. the King may grant Eſtovers in his Foreſt without view of the Foreſter.

Whereas heretofore ſome queſtion hath been moved between the Lord Treaſurer of England, and the Warden and Chief Juſtice, and Juſtice Itinerant of all the Kings Majeſties Foreſts, Chaſes, Parks and Warrens on this ſide the water of Trent, what appertaineth to each of their offices and places concerning the dealing with and diſpoſing of Woods, Trees, and Coppices within his Highneſſe Parks, Foreſts, and Chaſes, which being by his Majeſty referred to the conſideration and determination of his Judges, and Barons, they have reſolved touching the ſame by one uniform aſſent, as hereafter followeth, viz. That as the Lord Treaſurer of England for the time being, and Court of Exchequer have the only ordinary power under the King to deal therein ſo far forth as the ſame concerns the inheritance and profit of the Crown, as in the ſale of Woods, Trees, Coppices and ſuch like: ſo in like manner it concerns the Warden and Chief Juſtice, and Juſtice Itinerant of all the Kings Majeſties Foreſts, Chaſes, Parks,

The Order of the Exchequer upon the reſolution of the Judges.

Parks, and Warrens, and their miniſters to deale therein ſo far as it may concern the preſervation and maintenance of the Game, in reſpect of the ſhades, coverts, pannage, and ſuch like for the Deer. And therefore it is reſolved by all their opinions, that the Lord Treaſurer of England and Court of Exchequer may not ſell any Woods or Coppices within any the Kings Parks, Foreſts, or Chaſes, (except windefals, rootfalls and meer dead and ſear trees) without the privity and allowance of the ſaid Warden, and Chief Juſtice, and Juſtice Itinerant, within whoſe juriſdiction it is: Nor may cut down the dead and fore trees, nor carry them or windefals or rootfals away, but at fit times, and by the view of ſuch as have charge of the Game, whereby it may be ſeen unto, that the ſame may be done at fit and convenient times: and that no trees, other then thoſe that be dead and fear: and meerly windefals and rootfals, may be thrown down or taken away without the privity and allowance of the Warden, and Chief Juſtice, and Juſtice Itinerant of his Majeſties Parks, Foreſts, or Chaſes.

And as for the Warden, and Chief Juſtice, and Juſtice Itinerant, and the Keepers and other miniſters of Parks, Foreſts, and Chaſes appertaining to the King, they may not cut down any trees for new paling or railing, or for repair of Lodges, without the Warrant and allowance of the Lord Treaſurer of England for the time being: but timber needfull for mending of ſmall defects in old pales or rails that are broken, ſo as the ſame do not exceed two or three timber trees in any one Foreſt, Park, or Chaſe, in any one year, they may be permitted to take of trees in places fit, without making waſt thereof, or any ſpoile or prejudice to the Kings inheritance, making the Kings Surveyor of the Woods ſpeedily acquainted, who is to ſee that the ſame hath been accordingly well imployed: and needfull browſe alſo in places fit, and times ſeaſonable the Keepers may take for the Deer, not cutting down the limmes or great boughs of the trees. And therefore it is ordered by this Court, that from henceforth where it ſhall be thought requiſite to ſell any of the Kings Woods or Coppices within any his Parks, Foreſts, or Chaſes, that a Writ or Commiſſion in nature of an Ad quod damnum ſhall be directed unto the Warden and Chief Juſtice, and Juſtice Itinerant within the Foreſts, within whoſe government the ſame is to be done, to enquire and certifie what number of trees and what Coppices may be ſold, and in what places with leaſt prejudice to the Kings Game; and that upon the return thereof, the ſale ſhall be made of ſuch trees and Coppices, as upon ſuch Certificat ſhall be thought fit to be ſold. And in like manner it is ordered, that for the new paling, and new railing, and new building of Lodges in any place within or about any his Majeſties Parks, Foreſts, or Chaſes, and the great repairs of old Pales, Rails, or Lodges in or about the ſame; that it is to be done upon Certificate from the Warden and Chief Juſtice, and Juſtice Itinerant, and the Surveyor of his Majeſties Woods within whoſe Juriſdiction it is, by Warrant from the Lord Treaſurer of England for the time being.

It is very obſervable, that if any Act of Parliament hath been made againſt any of the Articles of the ſtatute of Carta de Foreſta, by the Act of Parliament of 42 E. 3. the ſame is made void, and by the ſtatutes of [a] Confirmationes Cart' all judgements given againſt any of the points of Carta de Foreſta, ſhall be holden for void. And where H. 2. Fitz Empreſſe claimed that he might make Foreſts not only within his own Woods and Grounds, but in the Woods and Grounds of his Subjects, and thereupon made divers ſuch Foreſts within his own and other mens Woods and Grounds: whereupon ſome Readers and others that have followed them are of opinion that H. 2. might De jure doe that which he did. But this Act of Carta de foreſta, which is but a declaratory law reſtoring the Subject to his former right, is directly againſt that conceipt, in theſe words. [b] In primis omnes foreſtæ, quas Henricus avus noſter afforeſtavit, videantur per bonos & legales homines; & ſi [c] boſcum aliquem alium quam ſuum dominicum afforeſtaverit ad damnum illius cujus boſcus ille fuerit, ſtatim deafforeſtetur; & ſi boſcum ſuum proprium afforeſtaverit, remaneat foreſta, ſalva [d] communia de herbagia & aliis in eadem foreſta illis qui prius eam habere conſueverunt. To the ſame effect is the third

42 E. 3. cap. 1.
[a] Confirm. Cart. 25 E. 1.
[b] Cart. de foreſta. cap. 1. & 2.
[c] This is an Act of reſtitution, for if the King might have made a Foreſt in other mens Woods, then could not the owner have felled down his own woods without view or licenſe, *& ſic ad damnū illius, &c.*
[d] *Nota*, all manner of Commons are ſaved.

third Chapter. Neither could H. 2. or any other King have made or raiſed a free Chaſe, Park, or Warren for himſelf in any of the grounds of the ſubjects; for it is truly ſaid in Pl. Cō' that the common law hath ſo admeaſured the Kings prerogatives, that they ſhould not take away, nor prejudice the inheritance of any. But we agree, that all the lands of the ſubject are originally derived from the Crown: And therefore when the ancient Kings had the moſt part in their own hands, or at leaſt great Deſarts, waſte and woody grounds for want of habitation, they might make what Foreſts it pleaſed them therein, which may be a reaſon and cauſe of a lawfull beginning, and therefore a Foreſt may be by preſcription good in law over other mens grounds. But the King in his own grounds may make a Foreſt at this day, which is alſo proved by theſe two Chapters, for ſuch Foreſts are thereby ſaved and enacted to ſtand.

Pl. Com' Seignior Berkeleys caſe. fo. 336.

King H. 8. intending to make a Foreſt about his houſe at Hampton Court aſſigned and limited a certain Territory of grounds for nouriſhing and generation of Beaſts of Venery, and Fowls of Warren, extending over the lands and grounds of divers and many Freeholders, and Copiholders, within the Parrs, Townſhips, and Villages of Eaſtmulſey, Weſtmulſey, Walton, Ether, Weybridge, and part of Cobham: and finding that he could not erect either Foreſt or Chaſe over other mens grounds without their conſents, did agree with the Freeholders and cuſtomary tenants, as by his Indenture bearing date the firſt day of October in the 29 year of his reign, between him on the one part, and Sir Richard Page Knight, Thomas Henage Eſquire, and other the Freeholders and cuſtomary Tenants in the Towns and Villages aforeſaid of the other part, wherein the King doth name it (ad faciendum populum for the eaſier paſſage) Hampton Court Chaſe. But afterwards (in cloſe words in ſeverall places) that it ſhould have all ſuch and like Liberties, Juriſdictions, and Prehe-minences, Laws, Statutes, Officers, &c. * as any Chaſe or Foreſt within this Realm had, &c. And all offences done within the ſame, ſhould be puniſhed as if the ſame had been done within any Chaſe or Foreſt within this Realm. And the King did thereby covenant and grant, that the Freeholders and Copyholders aforeſaid might fell and take their Woods, Groves, and Coppices, at their will and pleaſure without any view, &c. and to make their hedges and fences about their Corn, &c. to keep out the Deer, &c. And (for recompence to both Freeholders and Copyholders, &c.) that the third part of the free rent of every Freehold ſhould be deducted, and the moity of the fine of the heir of every Copiholder ſhould be alſo deducted, &c. which Indenture and all the covenants therein being recited, it is enacted by authority of Parliament accordingly. By which Act and divers generall clauſes referring to Foreſts, the King intended to have it a Foreſt. But hereby it plainly appeareth both by the Kings ſaid Indenture, and by the judgement of the whole Parliament, that the King could neither erect any Chaſe or Foreſt over any mans grounds without their conſent and agreement. And yet King H. 8. did ſtand as much upon his Prerogative as any King of England ever did.

31 H. 8. cap. 5.

* Nota.

But to joyn this this new with ſome that is ancient. In Rot. Parl. anno 18 E 1. there is a notable Record in theſe words:

Petitio Epiſcopi Covent. & Lich. contra Juſticiarios Foreſtæ.

Rogerus Epiſcopus Covenir' & Lichf' queritur contra Rogerum Extraneum & ſocios ſuos Juſtic' Domini Regis de Foreſta in Com' Staff. Eò quod ſeiſ. in manus domini Regis boſcos ipſius Epiſcopi de maneriis ſuis de Cannock & Ruggeleghe, &c. Rogerus & alii Juſticiar' ven' & dicunt, quod in Itinere ſuo præſentatum fuit per Viridar', Foreſtar' & alios fideles Domini Regis, quod prædicti boſci ſuper Dominum Regem & ejus progenitor' per ipſum Epiſcopum & prædeceſſores ſuos purpreſtabantur. Et eo quod licet eis Juſticiariis in Itineribus ſuis purpreſturas factas infra metas foreſtæ Domini Regis in manus Domini Regis ſeiſire, ideo ſeiſire fecerunt, &c. Et Epiſcopus bene concedit quod ſunt infra metas foreſtæ: Set dicit quod Rex Ric' per cartam ſuam Dat' 4 die Decembris

Purpreſtur'.

*cembris Anno regni ſui primo dedit Hugoni tunc Epiſcopo Coventr' & Lich. prædeceſſori ſuo & ſucceſſoribus ſuis dicta duo maneria cum Eccleſiis, hundred', & omnibus aliis libertatibus. Et per aliam cartam dat' 30 Novemb. Anno regni ſui primo conceſſit dicto Hugoni quod omnia maneria ſua, terræ & omnes homines ſui & feod' Eccleſiæ de Coventr' & Lichf. de Ceſtr' & Salop, & de Gnowſhall & omnium Eccleſiarum ſuarum, libera eſſent & quieta de foreſta, & de placitis foreſtæ, de vaſtis & aſſartis & regardis foreſtæ, cum multis aliis libertatibus in eiſdem cartis recitatis, &c. Virtute quarum Cartarum, ipſe & omnes prædeceſſores ſui à tempore confectionis earundem Cartarum ſolebant fugare in dictis boſcis, & voluntatem ſuam inde facere, &c. Et petit quod dominus Rex, &c. Et prædict' Juſtic' dicunt quod Dominus H. Rex pater Domini Regis nunc fuit in ſeiſina dictorum maneriorum & boſcorum. Et ſcrutatis Rotulis, & Brevibus Scaccarii invenitur primum breve regis H. Anno regni ſui 14 Vic' Staff' direct', & quod ſciat, quod reddidit A. tunc Epiſcopo Coventr' & Lichf. dicta maneria, &c. Item 2 alia brevia Baronibus de Scaccario direct' quod computent Vic' Staff. 30 ſ. 6 d. pro med' pro anno 14. Item comp' &c. 61 ſ. pro Anno 10 predictis maneriis, &c. Et prædict' Juſtic' dicunt, quod patet per eaſdem Cartas quod carta per quam Epiſc' clam' eſſe quietus de foreſta, &c. data fuit & facta ante cartam per quam dictus Rex R. dedit Epiſcopo, manerium & boſcos prædictos, per quod dicunt quod prædictus Epiſcopus non poteſt clamare dictos boſcos eſſe quietos, &c. per formam dictæ Cartæ factæ ante donationem dictorum boſcorum: ob quod datus eſt dies dicto Epiſcopo, &c. in unum menſem ad parliament. &c. Poſtea ad Parliamentum nunc, &c. venit prædict' Epiſc' in propria perſona ſua, & reddidit Regi dictos boſcos ut jus ipſius Regis. Et idem Dominus Rex ex gratia ſua conceſſit & dedit eoſdem boſcos prædicto Epiſcopo per eaſdem metas, bundas, & diviſiones per quas ipſe & prædeceſſores ſui à tempore confectionis Cartæ prædictæ Richardi Regis boſcos illos tenuer', &c. Et quod habeant & teneant liberos ab omnimodis placitis foreſtæ, &c. * Et quod nec Juſticiar' foreſtæ ſeu Foreſtar' Viridar' & Regardatores, ſeu alii miniſtri quicunq; ſe intromittant infra metas ſupradictas licet ſint infra metas foreſtæ antiquas de Cannok. Et pro hac, &c. idem Epiſcopus cognovit ſe teneri Domino Regi in mille libris ſterling.*

Gnowſhall.

Nota, in boſcis deafforeſtatis per cartam licet fugare, & voluntatem inde facere; à fortiori, in boſcis deafforeſtat' virtute Actus Parl. de Carta de Foreſta.

38 H. 6. fo. 10. ac'

Adjorned into Parliament.

Deafforeſtatio, per Cart. Nota.

* Nota, infra metas foreſtæ, &c. tamen extra foreſtam. Foreſta de Cannock.

See hereafter pag. 307.

Obſerve well this Record, and the parts of the ſame. And it is to be known, that where divers perambulations were made in the reign of H. 3. E. 1. and E. 2. that all theſe perambulations and others that ſhould be made (albeit there be no Charters thereof now extant) are eſtabliſhed and made good, both by the ſtatute of 1 E. 3. cap. 1. ſtat. 2. in print: and by an Act of Parliament in 1 R. 2. nu. 61. in the Roll of Parliament, and not in print; and by another Act of Parliament 5 R. 2. nu. 84. not in print. For albeit it be to be preſumed that Charters have been made according to the Perambulations; yet foraſmuch as time wears out many things, if Charters ſhould now be required, many places ſhould become foreſt againe; which now are in peace and deafforeſted.

1 E. 3. ca. 1. ſtat. 2. Rot. Parl. 1 R. 2. nu. 61. 5 R. 2. 84.

The form of the perambulation of a Foreſt is, Perambulatio facta in Com' Eborum de foreſta de G. die Anno Regis, &c. apud H. coram A. B. C. D. Juſticiariis Domini Regis ad dictam perambulationem faciend' aſſignatis per ſacramentum F. G. M. P. N. S. &c. Qui dicunt ſuper ſacramentum ſuum, &c. **And ſo ſet down the metes and bounds of the Foreſt, ſhewing what is within the Foreſt, and what to be extra foreſtam ſecundum tenorem Magnæ Cartæ de Foreſta, eo quod afforeſtata fuerit poſt coronationem Domini Regis Henrici Regis 2, &c.** In cujus rei teſtimonium, &c.

Nota,

Nota, the Charters be generall and short to this effect. Rex omnibus ad quos præsentes literæ pervenerint, Salutem. Sciatis quod volumus & concedimus pro nobis & hæredibus nostris, quod perambulationes factæ coram A B. C D. ad hoc assignat' per præceptum nostrum de forestis nostris in Com. Eborum de cætero teneantur & observentur per metas & Bundas contentas in eisdem perambulationibus, quarum tenor de verbo in verbum sequitur in hunc modum. And rehearse the whole perambulation.

A long complaint in Parliament against Foresters, for affforesting of mens purlieus, for undue triall and for their extortions, too long here to be rehearsed, but worthy to be read, with a prayer that the great Charter may be kept, and that all men may enjoy their purlieus according to the perambulations made in the reign of King E. 1. whereunto the King answered, [The King would the great Charter to be kept: and that such as will complaine in the right of their purlieus, may have Writs out of the Chancery.] See Rot. Parl. 50 E. 3. nu. 80. & 1 R. 2. nu. 60. Rot. Parl. 22 E. 3. nu. 26.

Purlieu containeth such grounds which H. 2. R. 1. or King John added to their ancient Forests over other mens grounds, and which were disafforested by force of the statute of Carta de foresta, cap. 1. & cap. 3. and the perambulations and grants thereupon. And is derived from a French Adjective and a French Nown, *viz.* Pur which signifieth cleare, entire, and exempt, and Lieu, that is, a place entire, clear, or exempt from the Forest. And both of these derived from the Latin Adjective and Nown, *viz.* purus locus; and in this sense the Civilians called that purum locum qui sepulchrorum religioni non est obstrictus. And the perambulation whereby the purlieu is deafforested is called in French Pourallee, *i.* perambulatio, so as the purlieu and pourallee are two distinct things, and ' purlieu is the right name of the place deafforested. ¶ *Purlieu what it is, and whereof deriv'd.* 33 E. 1. stat. 5.

By this it appeareth that Chases that never were any Forests cannot have any purlieu, and consequently the case in 16 Eliz. Dier 326, 327. is mistaken, for the Chase of Whaddon never was any Forest. Whereby it may be observed, how necessary the true derivation of words is, according to the example of Littleton, as in divers parts of the first part of the Institutes appears.

By this deafforestation the owners of the grounds within the purlieu may at their will and pleasure sell, cut down, eradicate, and stub up all the Timber, Woods, and underwoods, convert their Pastures, Meadows and other Grounds to arable, inclose them in with any kind of inclosure, build and erect new edifices upon the same or any part thereof, and to dispose and use the same after the disafforestation, as they never had been affforested.

And where some have conceived, that quoad to the owners of the soyle the purlieu is disafforested, but not as to others, but as to them it should remains a Forest, by reason of these words in the first Chapter, ad damnum illius cujus boscus ille fuerit, those words were added to shew the unlawfulnes of the affforestation, because it was ad damnum, &c. as hath been proved before. And then these men must make a diversity between a deafforestation by force of the first Chapter of affforestations in the reign of H. 2. And deafforestations made by force of the third Chapter of affforestations in the reigns of R. 1. and King John, for there the clause of ad damnum is omitted, and therefore those affforestations are utterly made void against all men.

The statute of Carta de foresta hath been above 30 times, and lastly in 4 H. 5. confirmed and enacted and commanded to be put in execution, and we finde no authority in law that we remember against our opinion herein; therefore we proceed and do hold, that in any purlieu a man may as lawfully hunt to all intents and purposes within the purlieu within his own grounds, as any other owner may doe in his grounds that never were affforested at all.

Some have endeavoured to limit the purlieu man to hunt by custome or prescription, but all the said statutes were made within time of memory against which they cannot prescribe. Some endeavour to maintain it to be by Forest law, but it is questioned whether there be any such Forest law, in that point, for See the first part of the Institutes Sect. 170.

Quod non legitur non creditur: but to conclude this point, No foreſt law can ſtand againſt laws enacted by Authority of Parliament. Others think, that the ſaid ſtatute of 33 E. 1. ſtat. 5. or ſome other ſtatute in the reign of E. 1. E. 2. or E. 3. doe in ſome ſort reſtrain their hunting, which is utterly denyed, that they are reſtrained by any ſuch in any of the ſaid Kings times; but if any ſuch ſtatutes were, they are, being contrary to the ſtatute of Carta de Foreſta, repealed by the ſtatute of 42 E. 3. cap. 1. And all the Statutes or Aſſiſes, either that of Woodſtock in the reign of H. 2. or any other in his time, or in the reigns of R. 1. or King John are all abrogated by the ſtatute of Carta de Foreſta made in 9 H. 3. cap. 1. & 3. as to the Deafforeſtations, &c. And the ſtatute or Aſſiſe of Woodſtock doth extend to Deafforeſtations before, and not after, the words thereof being, Nullus faciat aliquam inſtallationē inter foreſtā & boſcos, &c. p ipſū vel progenitores ſuos deafforeſtatos. And for the ſame reaſon the Purlieu man may keep his dogs within the purlieu unexpeditated, and ſeeing the wilde Beaſts doe belong to the purlieu man ratione ſoli, ſo long as they remain in his grounds, he may kill them, for the property ratione ſoli is in him; ſo as hereby concerning purlieus, and by the reſolution of the Judges concerning Chaſes, it appeareth that the makers of the ſtatute of 22 E. 4. miſtook the law in both of them, viz. concerning Chaſes and Purlieus, but the ſtatute being in the affirmative worketh no prejudice to any. And if he chaſe them with Greyhounds, and the Beaſts of the foreſt doe flee towards the foreſt for their ſafety, if the owner purſue them to the bounds of the foreſt, and then call back his dogs, and doe his endeavour to call them againe from the purſuit, although the dogs follow the chaſe in the foreſt, and kill the Kings Deer there, this is no offence, ſo as the owner enter not into the foreſt, nor meddle with the Deer ſo killed. But if the dogs faſten upon the Deer, before he recover the foreſt, and the Deer drag the dogs into the foreſt, there the Purlieu man may follow his dogs and take the Deer.

Rot. Par. 51 E. 3. nu. 39.

dr 22 E. 4. cap. 7.

43 E. 3. 8. the Earl of Arundels caſe.

38 E. 3 fo. 10. b. ſimile. 12 H. 8. fo' 10. a.

In ſome Letters Patents of the perambulations or parallies of foreſts made by King E. 3. to any County where lands are diſafforeſted, which we have ſeen, there is reſerved to the King forty days for his wild beaſts within the purlieus to return again, and for his Rangers within that time to rechaſe them into the foreſt, which is taken to be a convenient time for that purpoſe. And albeit theſe purlieus be abſolutely diſafforeſted, and have no liberty of foreſt there, yet for conveniency it hath been permitted that the Rangers of the foreſt ſhould as often as the wild Beaſts of the foreſt range into the purlieu, with his hound rechaſe the ſame: and theſe Rangers have uſed to preſent unlawfull hunting and Hunters of the Kings Deer within the purlieu, as in the night, or at unſeaſonable Deer, or killing of the Kings Deer in purlieus by no purlieu men, but unlawfull Hunters or the like: ſuch as ſhould not take advantage of their own wrong both to the King and the purlieu men, and that they are known to be Deer belonging to the Kings foreſt, becauſe there are no other within the purlieu; wherein the beſt rule we can (for avoiding of tediouſneſſe) give the Reader, is to follow the judiciall Records and Preſidents of the Eires holden before grave and learned Juſtices in Eire, as thoſe of Pickering, Lancaſter, & the like concerning preſentment of matters done within the purlieus of the Rangers, whereunto we doe rather incline, when we conſider the oath which the Rangers have anciently taken, and continually in theſe words. You ſhall truly execute the office of a Ranger in the purlieu of P. upon the border of the Kings foreſt of P. You ſhall rechaſe with your Hound and drive the wild Beaſts of the foreſt, as often as they ſhall range out of the ſame foreſt into the purlieus; You ſhall truly preſent all unlawfull hunting and Hunters of wild Beaſts of Venery and Chaſe * as well within the purlieus, as the foreſt, and thoſe and all other offences you ſhall preſent at the Kings next Court of Attachments, or Swanimote which ſhall firſt happen: So help you God. And it is to be noted, that in ſuch foreſts, as have no purlieus, there is no Ranger.

20 E. 3. Rot. Par. 1 pars pro deafforeſt. Foreſtæ de Kemſam.

Vide Rot. Parl. 12 E. 3. nu. 26, 27. a complaint of the purlieu men, and the Kings anſwer.

The oath of the Ranger.

* This proveth that the purlieus are no part of the Foreſt, but diſtinct things. Rot. Par. 51 E. 3. nu. 39. 50 E. 3. nu. 80. 1 R. 2. nu. 60.

It was petitioned in Parliament, that no man be impeached for hunting within the purlieu or without the bound of the foreſt, and that there be levied no aſſart rents.

The

This Petition conſiſting on two parts. 1. Concerning hunting in the purlieu, or out of the bounds of the foreſt, the ſecond concerning aſſart rents.

To the firſt: the King anſwereth, That the Charter of the foreſt ſhall be kept, which is a yeelding to the Petition for that part, for by that Charter the bounds of the foreſts are eſtabliſhed, and no purlieus excepted.

As to the ſecond: he anſwered, That the demand was unreaſonable.

The Commons made Petition that men might enjoy their purlieus freely, and that perambulations might be made as was in the time of King H. 2. 2 R. 2. nu. 48.

Whereunto the King anſwered, The King thinketh the perambulations are duly made, and who will, may complain, and ſhall be heard.

The Abbot of Whitby had a foreſt called Whitby foreſt (by the grant of H. 2. and King John with all Officers incident thereunto) adjoyning to the foreſt of the Earl of Lancaſter called Pickering foreſt, and the game of the foreſt of Pickering ranged into the foreſt of Whitby, Idem Abbas habens exploratores ſuos ſtatim ponere fecit retia, & alia ingenia ſua juxta Hakeneſſe & alibi diſtan' a foreſta iſta per tractum unius arcus & aliquando plus, & poſtea cum canibus excitare fecit feras, ita quod p excitationem illam plures ferarum illarum in redeundo & fugiendo verſus foreſtam de Pickering decidunt in retibus & ingeniis prædictis & capiuntur, & annuatim capere facit in deſtructionem ferarum foreſtæ prædictæ de Pickering *ad damnum domini*, & neſcitur quo Warranto; per quod præceptum fuit Vicecomiti quod Venire faciat prædictum Abbatem. Whereupon the Abbot came and pleaded his title to the foreſt, ut ſupra. Et quod omnes Abbates loci prædict' virtute Conceſs', &c. prædictos cervos & cervas in locis prædictis ubi retia & ingenia prædicta poſita fuerunt, & quæ fuerunt infra limites Foreſtæ ſuæ de Whitby, & quoad quod idem habens exploratores ſuper feras domini, &c. retia & ingenia poni fecit prope Foreſtam de Pickering, &c. per quod in redeundo plures feræ capt' fuerunt, quod omnino eſt contra Aſſis' Foreſtæ, idem Abbas dicit, quod ad hoc reſpondere non debet, &c. Et quia manifeſtè liquet Curiæ, &c. quod feræ de Foreſta ad Foreſtam aliter conferri non poſſunt, niſi ipſius in cujus Foreſta inveniuntur, eo quod ſigno aliquo non conſiſtunt ſignatæ nec diviſas aliquas cognoſcunt, Ideo conſideratum eſt, quod idem Abbas eat ſine die. In Itin' Pick. 8 E. 3. Rot. 42. Nota, for Harts, Hyndes. The Kings Deer are not branded or ſigned with any mark, that they may be known whoſe they are out of the Foreſt. 7 H. 6. fo. 36.

By which Record and many others it doth appear, that when the Kings Game of the foreſt doe range out of the foreſt (and purlieu, if any be) they belong not to the King, but are at their naturall liberty, & occupanti conceduntur.

And this is the reaſon that ſome have ſaid, that where the King was ſeiſed of the foreſt of M. in fee, and that a cuſtome was pleaded time out of mind, that if any Beaſt of the foreſt ſhould range into the free Chaſe of the Abbot de Dien adjoyning to the ſaid foreſt, that the Foreſters of the ſaid foreſt, &c. might enter into the ſaid Chaſe, and with little dogs rechaſe the Kings Beaſts of his foreſt into the foreſt again, that this cuſtome is againſt law, for that (beſides the reaſon yeelded in the Abbot of Whitbies caſe) immediately when they are out of the bounds of the foreſt, the property is out of the King, for the being within the foreſt maketh the property in that caſe. But the book of 7 H. 6. is left at large whether the preſcription be good, or no, and yet aid was thereupon granted: and Dier 16 Eliz. 326, 327. agreeth therewith. But in the Abbot of Whitbies caſe there is no preſcription for the King, but againſt him. Lib. 5. fo. 104. b. Rolſtons caſe. 16 El. Dier 326, 327.

It is to be obſerved, that by the law of the foreſt, when any claim is made by any ancient Charter of any Franchiſe, Liberty, or Immunity, or diſcharge within the foreſt by ancient and obſcure tearms and words, the entry is (for example) Et quia non liquet curiæ manifeſtè cujuſmodi libertates prædict' vocabulorum idem Prior habere intendit, dictum eſt Priori quod prædict' vocabula declaret, &c. And after he that maketh the claim, declareth, that is, explaineth the ſame, and pleadeth further, Quod ipſe & prædeceſſores ſui ſemper à confectione Cartæ prædictæ ſine interruptione uſi ſunt & gaviſi ſunt libertatibus prædictis (according to his declaration) & hoc paratus eſt verificare per miniſtros iſtius Foreſtæ, &c. Ideo inquiratur rei veritas per eoſdem, &c. or the entry is after the declaration made. Et quia videtur Juſticiariis quod expediens eſt & neceſſe, quod Curia certioretur Vide Itin. Pick. 8 E. 3. The Prior of Ellortons caſe. Rot 35. Et ibid. the Prior of Maltons caſe. Rot.

tioretur ſuper poſſeſſionem ipſius Prioris in hac parte, inquiratur inde veritas per miniſtros ejuſdem Foreſtæ, and thereupon the Foreſters, Verderers, and Regarders are ſworn, and ſo much as they find have been continually uſed, is allowed, and ſo much as hath not been uſed is diſallowed; ſo as Uſe and continuall poſſeſſions are the beſt Expoſitors of ancient and obſcure words.

Regula. Hil. 6 E. 3. Rot. 179. Coram Rege diuturnitas & longæva poſſeſſio virtute generaliũ verborum in antiquis Cartis ſufficiunt.

For example: ¶ Quietum eſſe de miſericordia Foreſtæ, is to be quit of all amerciaments in the which he in any ſort might fall within the foreſt. And here miſericordia is taken as well for a fine, as for an amerciament.

¶ Quietum eſſe de Vaſto, if he did waſt in his woods within the foreſt he ſhould not be amerced, nor for any other waſt.

¶ Quietum eſſe de rewardo, that is to be quit of amerciament whereſoever in any Pariſh within the foreſt, if the uſage had been accordingly.

8 E. 3. Itin. Pick. Lambſtons caſe. putura. Geldũ in Domeſday ſæpe pro Scot Anglicè.

¶ Quiet' de omnibus geldis, *i.* quiet' eſſe de omne putura Foreſtar', & de omni præſtatione, ad collectionem garbarum, agnorum & lanæ ad opus foreſtar' ejuſdem foreſtæ.

¶ De Woodgeldis, *i.* quiet' eſſe de omni collectione in foreſta præd' ad opus quorumcunque miniſtrorum foreſt' præd' ratione boſcorum.

23 H. 3. gard. 148.

¶ De Horngeldis, Quietum eſſe de omni collect' in foreſta de beſtiis cornutis aſſes.

¶ De Fotegeldis, *i.* quiet' eſſe de finibus & amerciamentis pro canibus infra foreſtam inexpeditatis, if the uſage hath been accordingly, otherwiſe not: for ancient Charters by the law of the foreſt muſt be adjudged according to the continued uſage, and not ex vi termini.

¶ De Burcſtall, *i.* ubi homines convenire tenentur, ibidem convenire ad ſtableiam faciend' circa feras, et ad eaſdem congregand', quietum eſſe de hoc ſervicio, quando dominus chaſeaverit.

¶ De Triſtris, anciently written traiſtis, and is derived of traiſt, *i.* truſt, and ſignifieth, ubi alii homines manentes in eadem foreſta tẽpore quo dominus chaceaverit in eadem venire debent, & confiſi ſunt, Anglicè are truſted, ad tenend' Leporarios certis locis aſſignatis pro feris ibidem expectand' & capiend', quietum eſſe de hoc ſervicio.

¶ De Fledwite, of fled, a Saxon word, a fugitive, one that fleeth, an outlaw, and wite a Saxon word alſo, a freedome.

* Carta de Foreſta cap. 14.

¶ De Careyo, cum aliquæ Carræ, ſeu careſtæ cartatæ tranſeuntes per foreſtam, & ſimiliter * ſummagia ſeu Somagia equorum conſuet' ſunt ſolvere ſecundum magis vel minus miniſtris ibidem pro chemino, ibidem habend'. Quietum eſſe de hujuſmodi ſolutionibus. Sumagium or Somagium commeth of the French word ſomier or ſumier, which ſignifieth a Horſe carrying any load. Chimagium, a Toll for wayfaring men through a Foreſt, derived from the French word Chemin for a way.

¶ De Scoto, ſeu Shoto, quando homines faciunt collectum inter ſe ad aliquod obtinendum ſeu evitandum. Quietum eſſe de tali collect'. ¶ De tallagio, idem ut de Scoto.

8 E. 3. Itin. Pick. fo. 149.

¶ Extra regardum foreſtæ. If any man within a foreſt doe hold his woods or lands by grant or preſcription to be extra regardum foreſtæ, the woods or lands are deafforeſted.

¶ Exilium, *i.* cum homines utlegantur in Itinere iſtius foreſtæ pro tranſgreſſione Viridis ſeu Venationis.

¶ De eſcapio, ſecundum Aſſiſam foreſtæ ſi averia alicujus in landis vetitis, vel tempore vetito in eadem inveniantur, prima vice pro quolibet pede averiorum prædict' ipſi quorum fuerint amercientur ad unum denarium; & ſi ſecundo ibidem inveniantur, ſimiliter pro quolibet pede unum denarium: & ſi tertio ibidem inveniantur, averia illa remaneant domino forisfacta, de quibus amerciamentis & forisfacturis per hujuſmodi vocabulum, de eſcapio, extiter' quieti.

F. N. B. 230.

¶ De Pannagio, that is, to be quit to pay any thing for pawnage.

¶ Aſſertum, Aſſert, is ſo called of the effect (as ſome hold) and is derived (ſay they) of ad and ſero, aſſero, becauſe of wood grounds, mariſhes or waſt grounds they

they are converted to be ſown with Corn, and therefore in the Regiſter, & F.N.B. it is written aſſertare, with an E. and ſo it is in Carta de Foreſta cap. 4. Bracton hereof ſaith, Illud quod fuit aliquando boſcus, & locus vaſtæ ſolitudinis & communis & jam inde efficitur aſſartum, vel redactum eſt in culturam. And herewith agreeth Fleta, Illud olim fuit foreſta & boſcus, &c. & jam efficitur aſſartum, & reductum eſt in culturam, & idem dici poterit de mariſcis & aliis vaſtitatibus in culturam redactis.

Regiſt. 157. Fleta li. 2. c. 35. F.N.B. 226. f. Cart. de Foreſt. cap. 4. Bract. li. 4. fo 226. Fleta lib. 4. ca. 22. Lib. 2. cap. 25. Vide Lucubr. Ockam 20. b. Rot. Par. 51 E 3. nu. 39.

Others fetch it otherwiſe, but we hold, that it is derived of the French word eſſarter, to grub up, or cleer a ground of wood, &c. and this appeareth by Domeſday. Herefordſh. Merchelay in eodem manerio ſunt 58 acræ terræ provect' de ſylva, written over the ſame eſſars, de eſſart' ſylvæ exeunt 17 s. & 4 d. E being turned into A.

Radulphus Epiſcopus Karleol petit verſus Priorem Eccleſiæ Karleol decimas duarum placearum terræ de nova aſſartarum in Foreſta de Inglewood, quarum una vocat' Lynthwayt & alia Kyrthewayte, quæ ſunt infra limites parochiæ ſuæ de Aſpaterick. Et ſuper hoc ſimiliter venit Mr. Hen. de Burton perſona Eccleſiæ de Thoriſby, & eaſdem decimas clamat ut pertinen' ad Eccleſiam ſuam. Et Prior venit & dicit quod Henr. Rex vetus canceſſit dicto deo & Eccleſiæ ſuæ beatæ Mariæ Karleol' omnes decimas de omnibus terris quas in culturam redigerent infra Foreſtam, & inde eos feoffavit per quoddam Cornu eburneũ quod dedit Eccleſiæ ſuæ prædict', &c. Et Willielmus Inge qui ſequitur pro rege dicit quod decimæ prædict' pertin' ad Regem & non ad alium, quia ſunt infra bundas Foreſtæ de Inglewood. Et quod Rex in Foreſta ſua prædict' poteſt villas adificare, Eccleſias conſtruere, terras aſſartare, & eccleſias illas cum decimis terrarum illarum pro voluntate ſua cuicunque voluerit conferre, &c. Et quia dominus rex ſuper præmiſſ' vult certiorari, ut unicuique tribuatur quod ſuum eſt, aſſignetur, &c. et certificent regem ad proxim' Parliamentum, &c.

Rot. Plac. Parl. de Anno 18 E. 1. Rot. 8. Inter Epiſcopum Karleol' & Priorem ejuſdem de decimis aſſartorum.

¶ [a] Purpreſture. For this and the derivation, ſee in the Second part of the Inſtitutes, Statutum de Bigamis cap. 4. and the expoſition upon the ſame, and Carta de foreſta cap. 4.

[a] Glanv. li. 9. cap. 11, 12. Fleta lib. 2. cap. 35. 18 E. 2. de viſu Franc' pleg. Dier 7 El. 240.

[b] Coopartura is a Thicket or Covert of wood.

¶ [c] Maeremium is derived of the old Normandy word Mariſme for Timber.

[b] Cart. de Foreſt. cap. 12.

[c] 8 E. 3. Itin. Pick. fo. 17.

¶ [d] Scotales, Scotalæ, derived of two Engliſh words Scot and Ale, as much to ſay as a tribute or contribution of drinking for the miniſters of the Foreſt when they came to the houſe of any, whereunto others are contributory within the perambulation of the Foreſt, which then was called [e] potura, a drinking. And after they claimed the ſame for all victuals for themſelves, their Servants, Horſes, and Dogs, which was called putura; and this doth notably appear by a Record in 5 E. 3. in theſe words.

[d] Cart. de Foreſt. cap. 7. Fleta li. 2. cap. 35. Cap. Itin' W. 1. cap. 4. de Paſtur' pauperum.

[e] Potura. Vid. 45 E. 3. 15. & F.N.B. 209. b. *De potura pauperum*, a drinking or ſuſtenance for the poor. 12 H. 4. 24. Hil. 5 E. 3. Coram Rege Ro. 30 Eborum. 9 E. 3. Itin' Pick. fo. 150. b. *Putura.*

¶ [f] Putura in Chacea de Bowland, *i.* conſuetudo calmata per Foreſtarios, & aliquando per balivos hundredorum, recipere victualia, tam pro ſeipſis, hominibus, equis & canibus de tenentibus & inhabitantibus infra perambulationem Foreſtæ ſeu hundredi quando eo pervenerint, nihil inde ſolvend'. Where the ſtatute of Carta de Foreſta ſpeaketh. Nullus Foreſtarius ſeu balivus de cætero faciat Scotalas, &c. & by the ſtatute of 25 E. 3. it is enacted, that no Forreſter or Keeper of Foreſt or Chaſe, nor any other Miniſter ſhall make or gather ſuſtenance, nor other gathering of Victuals, nor other thing by colour of their office againſt any mans will within their Bailiwick or without, but that which is due of old right, that is, thoſe fees, which time out of mind they ought to have within that Foreſt, and as ſhall appear to be due by the oath of 12 Regarders.

[f] 8 E. 3. Itin. Pick.

Prior de Ellortons caſe. *Quiet' de geldis* is to be quit *de putura*. 25 E. 3. cap. 7. ſtat. Cap. Itineris *fillenale*, of the Saxon word *fillen*, or fullen, and *ale*, i. an Ale feaſt, whereat they were filled with Ale. Bracton lib. 3. fo. 117. in reciting of Capitula Itineris, calleth it Filckale, *i.* Fildale, an extortion *colore computationis*. Vide Fleta lib. 1. ca. 20. Carta de Foreſta cap. 7.

¶ Chablicia

8 E. 3. Itin. Pick. Sir John de Melſaes caſe.

¶ Chablicia, or Cablicia, browſe wood, derived of the French word Chablis, as boys Chablis, either rent down from trees by the wind, or branches of trees cut for the browſe of Deer.

¶ Parkebote, to be quit of incloſing of a Park or any part thereof, derived of two Engliſh words, Parke, and bote.

Fleta li. c. 47.

¶ Brigbote, or Bruckbote, to be quit of making of bridges.

¶ Pannagium, or panagium, is derived from the French word panage, *i.* paſtura pecorum in nemoribus de glandibus & aliis fructibus arborum.

Trin. 2 E. 3. Coram rege Rot. 12.

¶ Expaltare canes, *i.* expeditare canes. Expeditatio is derived of ex & pede, becauſe the Dog is lamed in the foot, inexpeditatus is unlamed.

Carta de Foreſta cap. 6.

Canis in this Act is taken for Maſtivus by theſe words, talis expeditatio fact' p Aſſiſam communiter uſitatam, which hath reference to the Aſſiſe of the Foreſt, tempore H. 2. Art. 6. which ſpeaketh only de expeditatione Maſtivorum, & Aſſis' & Conſuetud' Foreſtæ, 6 E. 1. cap. 9. ſpeaketh only de maſtivo.

¶ Ortelles, this word is taken from the French word Orteilles, in Engliſh, Claws.

Carta de foreſta ubi ſupra.

¶ Pellota, of the French word Pelote, and they from Pila: In this Act it is taken for the ball of the foot, ſine pelota, without the ball of the foot. And therefore by the expreſſe words of this Act the ball of the foot of the Maſtiffe is not to be cut off, but the three claws of the forefoot to the skin. This extendeth only to Maſtiffs, and to no other Dogs, for Ubi non eſt lex, ibi non eſt tranſgreſſio; and neceſſary it is, that ſuch as dwell in foreſts where there are coverts, that they ſhould keep other Dogs unexpeditated, and the Maſtiffe expeditated for the defence of their houſe, or for giving of warning of Theeves and Robbers, &c. Moloſſus (the old Britiſh word) is a Baſe theef, becauſe he doth maſe or amaſe a Theef, &c.

M.S. Priorat. Covent' fo. 14. b.

¶ Managium & meſuagium, is commonly in ancient Records taken for meſuagium.

The words of this Act are De expeditatione Canum exiſtentium in foreſta, and therefore in purlieus or places diſafforeſted, a man may keep a Maſtiffe without being expeditated. And that I may ſay it once for all, my intention is chiefly to explain the obſcure words of this ſtatute of Carta de Foreſta, and other Acts, and leave the Reader to the text it ſelf being plain: for, Satius eſt petere fontes, quam ſectari rivulos.

13 R. 2 cap. 13.
19 H. 7. cap. 11.
1 Jac. cap. 27.
3 Jac. cap. 13.
Aſſiſa Foreſt'.

Who may keep Greyhounds or other Dogs to hunt, or Ingens, &c. either in a foreſt, or out of the foreſt, appeareth by divers ſtatutes.

But if Greyhounds be found running ad nocumentum, the Foreſter ought to retain them, and preſent them in the preſence of the Verderers, and ſend them to the King, or to the Chief Juſtice of the Foreſt.

We find not that any Chapter or Article of Carta de Foreſta, doth extend to Chaſes or Parks, but onely the 11 Chapter. Quicunque Archiepiſcopus, Epiſcopus, Comes vel Baro ad mandatum noſtrum tranſierit per foreſtam noſtram, &c. which Chapter doth not onely extend to the Foreſts of the King, but to his Chaſes and Parks alſo, for ſo was the law before the making of this Act which is but in affirmance of the Common law of the foreſt before this Act.

1. In reſpect of the perſons, for every Lord of Parliament, be he Spirituall or Temporall, had this privilege beſides thoſe that be named in this Chapter, as ſuch Abbots and Priors, as were Lords of Parliament, and ſo of Dukes, Marqueſſes, and Viſcounts, which were erected and created, afterwards being Lords of Parliament have the ſame privilege alſo.

8 E. 3. Itin' Pick. fo. 134. A Foreſter or any other Officer of the foreſt cannot give a Nobleman a courſe in the foreſt but it is preſentable.

2. By reaſon of the kind of commandement ad mandatum noſtrum, ſaith the ſtatute, which words have reference to the Writ of Parliament directed to every Lord of Parliament. Ideo vobis mandamus, &c. and is a legall commandment by writ directed ſeverally to each and every Lord of Parliament to appear at the Kings Court of Parliament, &c. to treat de arduis & urgentibus negotiis regni, ſtatum & defenſionem regni & Eccleſiæ Anglicanæ concernentibus, and to recreate themſelves veniendo, and after redeundo, they may paſſing by any of the

Kings

Kings Forests, Chases, or Parks, hunt and kill one or two of the Kings Deer. The Lords of Parliament may doe it at other times ex gratia, but by law eundo & redeundo, to and from the Parliament.

3. Here is implyed that the Lord of Parliament may in the absence of the Forester or Keeper after the blowing of the horn, kill one or two of the Kings Deer, propriis suis canibus aut arcu suo proprio.

4. Here is a secret conclusion of Law, that albeit spiritual persons are prohibited by the Canon law to hunt, yet by the Common law of the Land they may for their recreation, to make them fitter for the performance of their duty and office, use the recreation of hunting, as here it directly appeareth: And in Assisa Forestæ 6 E. 1. it appeareth that the Abbot of Peterborow had a right of hunting in the Forest of Rockingham. And this appeareth in other Statutes, viz. 13 R. 2. 19 H. 7. 1 Jac. And at this day, and time out of mind, the King hath had after the decease of every Archbishop and Bishop (inter alia) Mutam suam canum, &c. his Kennell of Hounds, or a composition for the same, which and other things are in the Exchequer called multa.

Linwood de Vestratore Clerico, &c.
Cart. de Foresta cap. 11.
Assisa forestæ. 6 E. 1.
13 R. 2 cap. 13.
19 H. 7 cap. 11.
1 Jac. ca. 27.
Muta canum is derived from the French word *mait de chiens*.

5. The last conclusion is, that all Canons against the Laws or Customes of the Realm, are void and of none effect.

See 25 H. 8. cap. 19. &c.

¶ Of the drifts of the Forests, *Agitatio Animalium in Foresta.*

The drifts of the forests are said to be when all the Cattle as well of Commoners as of Strangers are driven by the Officers of the forest to some certain Pound or place inclosed, and the end hereof is threefold, viz. First, to see whether those that ought to common doe common with such kind of Cattle as by prescription or grant they ought. Secondly, if they common with such Cattle as they ought, whether they doe surcharge or no. Thirdly, if the Cattle of any Stranger be there which ought not to common at all.

By the statute of 32 H. 8. it is enacted, That all Forests, Chases, Commons, Moors, Heaths, and waste grounds within the Realme of England and Wales, and the Marches of the same, and every of them shall be driven at the Feast of St. Michael the Archangell next comming or within 15. dayes then next after, and so yearly to be driven by the Lords, owners, and possessors of the said Forests or Chases, or by the Officers of the same, and by the Constables, Headboroughs, Bailifs, Bursholders, and Tithingmen, within whose offices, precincts, & limits the Commons, Moors, Marishes, Heaths, and wast grounds being out of the Forests and Chases be or lie upon pain of xl. s. to be forfeited to our said Soveraign Lord the King by every of the said Officers, Bailifs, Constables, Headboroughs, Bursholders and Tithingmen, as often, and at every time as the said drift shall be omitted, or left undone, or not effectually done within 15. dayes after the said Feast of St. Michaell the Archangell, as is aforesaid. And it shall be also lawfull to the Lords, owners and possessioners of the said Forests and Chases by their Officers of the same, and by the Constables, Bailifs, Headboroughs, Bursholders and Tithing-men and every of them within the limits of their offices to make like drift of the said Forests, Chases, Commons, Moors, Marishes, Heaths, and waste grounds at any other season and time of the year whensoever, and as often as they shall think meet and convenient. 32 H. 8. cap. 13.

Out of this Act of Parliament, as to the drift of the Forest or Chase, these 5. conclusions are to be observed. 1. By what persons this drift is to be made, and therein if the forest be in the Kings hands it must be made by all the Kings Of-

ficers of attendance in the foreſt, and by four men and the Reve of every Town within the foreſt, who to that purpoſe are included under the name of Officers. And if they be in a ſubjects hands, then either by the owners or poſſeſſors of the ſaid Foreſts, or Chaſes, or by ſuch Officers, as is before ſaid. 2. At what certain time ſuch drift in foreſts or chaſes is to be made? It appeareth by this Act that it ought to be effectually done yearly within 15. dayes after the Feaſt of St. Michael the Archangel. 3 The ſaid drift may be made at other ſeaſon or time of the yeare whenſoever, and as often as they ſhall think meet and convenient. 4. That ſtoned Horſes under 15 handfuls high are prohibited to Common in any foreſt. See the ſtatute. 5 For Commons, &c. out of any Foreſt or Chaſe. In theſe words are included Purlieus and other grounds wherein men have Common, and theſe are to be driven by the owners and poſſeſſioners of the ſame, and by the Conſtables, Headboroughs, Bailiffs, Burſholders, and Tithingmen, within whoſe offices, precincts, and limits the ſaid Commons, &c. being out of any foreſt, or chaſe do lie at ſuch times as are aforeſaid.

Ayeries of Hawks 8 E 3. Itin. Pick. Sir Iohn de Melſaes caſe.

The ſtatute ſpeaketh De Aeriis Accipitrum, Eſpervorum, Falconum, Aquilarum, & Hieronum, which is but in affirmance of the Common law, for it extendeth to Ayeries of other Hawks then be ſpecially named, as to Ayeries Merleonorum in boſcis ſuis de Leveſham.

29 H. 8. tit. Officers, Br. 47.

A Foreſter by Patent for his life is made Juſtice in Eire of the ſame foreſt hac vice, the Foreſterſhip is become void, for theſe offices be incompatible, becauſe the Foreſter is under the correction of the Juſtice in Eire, and he cannot judge himſelfe: the ſame law is of a Warden of a foreſt and of a Juſtice in Eire of the ſame foreſt: Though the offices of the Steward and Juſtice of the Foreſt be both judiciall, yet whether he be Steward of the Swanimote, or of the Eire, he is under the correction of the Juſtice in Eire, and therefore incompatible.

We have been requeſted to ſet down what perſons and what Officers either that then were, or which have been ſince the laſt Eire, and how many ſorts of Officers, and what number doe belong to a Foreſt, which we cannot better reſolve and ſatisfie, then by the Records of the Eires of foreſts, and ſpecially by the writ of Summons of thoſe Eires, which we have thought good to ſet down verbatim, not onely for anſwer to the ſaid queſtions, but for divers other obſervations, as we find it in the ſaid Eire of Pickering with the exact and particular return of the ſame.

Vic' Eborum. The perſons that ought to appear before the Juſtices in Eire of the Foreſt, &c.

*Edwardus dei gratia Rex Angliæ, dominus Hiberniæ, & dux Aquitaniæ Vic' Eborum Salutem. Summon' per bonos ſummonitores Archiepiſcopos, Epiſcopos, Abbates, Priores, Comites, Barones, Milites, & omnes liber' tenentes, qui terras ſeu tenementa habent infra metas Foreſtæ dilecti conſanguinei & fidelis noſtri Henrici Com' Lanc' de Pick' in Com' prædict' & de qualibet Vil' ejuſdem Com' infra metas ejuſdem Foreſt' exiſten' quatuor homines & Præpoſitum & Foreſtar' Villarum, & * omnes alios, qui coram Juſticiar' ad placita Foreſtæ venire ſolent & debent, quod ſint apud Pickering die Lunæ prox' poſt Feſt' Sancti Michaelis prox' futur' coram dilectis et fidelibus noſtris * Ricardo de Willoughby, Jo. de Shardelowe, Roberto de Hungerford, & Johanne de Hambury, tribus vel duobus eorum quos ad requiſitionem dicti conſanguinei noſtri conſtituimus Juſtic' ad itinerandum hac vice ad Placita Foreſtæ ipſius Comitis in Com' prædict' a tempore quo Edmundus nuper Com' Lanc' pater præd' Henrici, cujus hæres ipſe eſt, Placita Foreſtæ in eadem Foreſta virtute * conceſſionis ſibi per dominum E. nuper regē Angliæ Avum noſtrum inde fact' ultimum tenuit, auditur' & factur' præceptum noſtrum de hiis quæ ad placita præd' pertin'. Fac' etiam venire coram Juſtic' prædictis omnes Foreſtar', Viridar', & omnes illos qui fuer' Foreſtar' & Viridar' Foreſt' prædict' in Com' prædict' poſt ultima placita prædict'*

Vic' Eborum.

* Under theſe words are included the Conſtable of the Caſtle, the Warden, the Ranger, the Agiſters, the Steward, the Bowbearer.

* Four great learned men Juſtices in Eire of the Foreſt.

* See Cart. de Foreſt. cap. 2.

Foreſtar' Viridar'

cum

cum omnibus attachiament' ſuis tam de Viridi quam Venatione quæ poſt ult' Placita Foreſtæ ſunt emerſa & nondum terminat' (viz.) *tam de illis Attachiamentis quæ manent infra metas Foreſtæ, quam de illis quæ manent extra Foreſt' : Fac' etiam venire coram eiſdem Juſticiariis tribus vel duobus eorum Regardatores ipſius Comitis in baliva tua, Ita quod habeant ibi omnia Regarda ſua ſigillis ſuis ſignat' & omnes Agiſtatores præfat' Com' in eadem baliva ſua cum omnibus Attachiament'. Et habeas ibi Sum' & hoc Breve. T. meipſo apud Weſtm' 17 die Auguſti, Anno regni noſtri 8.*

To what end the Officers are ſummoned.

Regardatores.

Ad quod breve Petrus de Salmerſh Vic' Eborum retornavit quod fecit plenum retornum iſtius brevis Hugoni de Nevill ballivo libertatis H. Comit' Lanc' Honor' de Pickering, cui executio iſtius brevis reſtat faciend', qui ſibi reſpond' quod ſummon' fecit Archiepiſcopos, Epiſcopos, Abbates, Priores, Comites, Barones, Milites, & omnes libere tenen' qui terras & tenementa habent infra mei' Foreſt', & de qualibet Vill' ejuſdem Com' infra metas ejuſdem Foreſt' exiſten' quatuor homines & Præpoſit' & Foreſtar' Villar', & omnes alios qui coram Juſticiar' ad placita venire ſolent & debent, quod ſint apud Pickering ad diem in Brevi prædict' contem' coram præfat' Juſticiar' tribus vel duobus eorum, auditur' & factur' præcepti domini regis de hiis quæ ad prædict' placita pertinent. Et quod venire fecit Foreſtar', Viridar', & omnes illos qui fuer' Foreſtar', & Viridar' Foreſt' prad' in balliva ſua poſt ult' placita prad' cum omnibus Attachiamentis prad' tam de Viridi quam de Venatione quæ poſt ult' placita Foreſta ſunt emerſa & nondum terminat. Et etiam quod venire fac' coram eiſdem Juſtic' tribus vel duobus eorum Regardatores ipſius Comitis in balliva ſua, ita quod haberent ibi omnia Regarda ſua ſigillis ſuis ſignat' & omnes Agiſtatores præfat' Comitis in eadem baliva ſua cum omnibus agiſtamentis prout patet in retorn' ſchedula ſua prædicto attachiata.

Nota, the punctuall and direct anſwer to all the points of the writ.

Foreſtar' de feodo in le Weſtward iſtius foreſtæ de Pickering, viz.
- *Willielmus de Percehay Miles.*
- * *Petronilla de Kynthorpe, & po. lo. ſuo Edmundum de Haſtings ad omnia faciend' qua Foreſtar' incumbunt durante Itinere, & fecit ſacramentum.*

* *Nota*, A woman that is a Foreſter in fee cannot execute the office her ſelfe, but ſhee may make a Deputy during the Eire, and her Deputy ſhall be ſworn, &c.
By Carta de Foreſta cap. 7. Tot Foreſtarii ponantur ad Foreſtas cuſtodiend' quot ad illas cuſtodiend' rationabiliter viderint ſufficere.

Foreſtar' Cuſtod' Foreſtæ in le Eaſtward, viz.
- *Rogerus de Leiceſter.*
- *Hugo de Yeland.*
- *Willielmus le Parker.*

* *Viridar' foreſtæ de Pickering,* viz.
- *Robertus Thurneſe.*
- *Rogerus Browne.*
- *Robertus Playce.*
- *Jo. de Kilwardbye.*

* *Viridarii* 4.

Regardatores For eſt and Pickering.
- *Willielmus de Everly.*
- *Rogerus de Longe.*
- *Iohannes Boye.*
- *Iohannes filius Alani.*
- *Galfridus de Kimthorpe.*
- *Thomas Thurneſe.*
- *Hugo de Nevill.*
- *Rogerus de Alveſton.*
- *Johannes filius Galfridi.*
- *Rogerus de Stapleton.*
- *Rogerus Strutcocke.*
- *Radulphus de Collingbton.*
- *Johannes de la Chemnie.*

Regardator' 13
By the ſtatute *de Carta de Foreſta cap.* 7. there are to be 12. at the leaſt, and, as here it appeareth, there may be more.

Agiſtatores 4.

Agiſtatores in le Weſtward iſtius Foreſte { Johannes Dringe. / Ricardus Ruſſell.

Agiſtatores in le Eaſtward iſtius Foreſte { Willielmus de Roſton. / Willielmus Ruſſell.

Nomina Foreſt' & Viridar' qui fuerunt.

Nomina Foreſtar' nunc iſtius Foreſte, & eorum qui fuerunt Foreſtar' iſtius Foreſte, & eorum qui fuerunt Viridar' iſtius Foreſte.

Alanus de Newton / Johannes de Wardeſden. { Capital' Foreſtar' Willielmi de Perchehay unius Foreſtar' de Feodo Foreſte de Pick. in le Weſtward ibidem.

Henry de Ripley / Thomas de Dalby. { Capital' Foreſtar' Petronille de Kinthorp alterius Foreſtar' de feodo Foreſte de Pickering.

David de Neuton / Thomas de Rippely { Capit' Foreſtar' Hugon' de Yeland For' Cuſtodis Foreſte in le Eaſtward.

Nomina Subforeſtariorum Foreſte predict'

Subforeſtarii 8

Johannes de Harley. / Ricardus de Aleintoſtes. / Willielmus Gower. / Ricardus de Helmeſly. / Johannes Munnewe. / Johannes Scot. / Willielmus Courtman. / Foreſtar' Radulphi de Haſtings Cuſtod' Foreſte predict' nunc.

Nomina ſubforeſtar' qui fuer' in Foreſta iſta poſt ultimum Iter, &c.

Galfridus de Hawly. / Robertus de Wigan. / Petrus Lilly. / Johannes Rouceby. / Rogerus fil' Nich. / Alanus fil' Radi. / Adamus fil' Willielmi. / Johannes de Nevil. / Thomas de Newton.

Viridar'.

Bernardus de Bergh, qui obiit, fuit Viridar' in Foreſta iſta, & Alexander de Bergh filius ejus et hares venit & reddidit rotulos ſuos tam de viridi quam de venatione tangen' Foreſtam iſtam de tempore predicto.

The Law of the Foreſt is, that if a Verderor dye, his heir is to bring in the Rols of his Auncetors time, which if he doe, then the Entry is ut ſupra.

Adam de Bruis qui obiit fuit Viridar' in Foreſta predict' & nullus eſt qui venit ad Rotul' reddend', Ideo Vic' ſeiſiri fac' omnia terras et tenementa quæ fuer' prad' Adæ quouſque, &c. Poſtea venit Willielmus B. filius ejus & hares, & fecit finem pro Rotulis predictis, & admittitur per 40s. prout patet in Rotul' de extractis.

If the Verderor alien his lands or die ſeiſed, and no man bringeth in the Rols, then ſhall the land by the law of the Foreſt be ſeiſed by the Sheriffe, which the Verderor had, untill the Rols be brought in, and if the Rols be loſt, then till he make his fine and have his Ouſter le main, and the Entry is, as is next above.

Ricardus de Shelton, qui obiit, fuit Conſtabular' caſtr' prad. & cuſtos iſtius Foreſt', & nullus eſt qui venit ad rotul' & munimenta iſt' Foreſt' tangen' reddend', Ideo veniant ejus terr' & tenementa tenentes ad reſpondend', &c.

It

If the Warden of the Foreſt dye, and his heire, or Tertenant bring not in the Rolls, &c. his heire or Tertenant ſhall anſwer for the ſame.

And here it is to be obſerved, that where the Foreſt of Pickering was appendant or belonging to the Caſtle of Pickering, that he that is the Conſtable of the Caſtle is ever by the Law of the Foreſt Chiefe Warden of that Foreſt. And ſo it is of the Foreſt of Windſor belonging to Windſor Caſtle, of the Foreſt of Rockingham belonging to the Caſtle of Rockingham, and all other Foreſts belonging to Caſtles. And accordingly here you may obſerve, that the office of Conſtableſhip and Wardenſhip are in this Record conjoyned one with the other. 26 Aſſ.p.60.

Philippus de Monte Gomeri qui ſequitur pro Domino Rege, petit verſ' Radulphum Quintyn Ballivam cuſtodiæ liberæ Hayæ Regis de Alrewas quæ pertin' ad Serjantiam Regis Seneſchall' Foreſtæ Regis de Canoco, & quæ ab eadem Serjantia alienata eſt ſine aſſenſu prædeceſſorum Regis Regum Angliæ. Et Radulphus venit, & per licentiam reddit Domino Regi inde ſeiſinam ſuam, &c. Trin.14 E.1.In banco Rot.7.Staff.

The duty of a Woodward doth appeare by his name, and by his oath. Nomina ſunt notæ rerum. Cuſtos foreſtarũ.

Hil.13 E.3. it is thus reſolved: Quilibet Woodwardus ſecundum Aſſiſam Foreſtæ debet portare hatchettum, & non arcum & ſagittas pro ſiniſtra ſuſpicione venationis deponend' ad præſentand' tam de viridi quam de venatione. Et videtur Juſtic' hic & Concilio Regis quod * Capreoli Anglicè Roes, ſunt beſtiæ de Warrenna & non de Foreſta, eo quod fugant alas feras. Hil.13 E.3.Coram Rege Rot. 103. Eborum. 8 E.3.Itin.Pick. acc. * Roe-bucks, Capreoli.

¶ Bedellus is an Officer of the Foreſt, that doth warne all the Courts of the Foreſt, and doth execute the Proces of the Foreſt, and make all Proclamations as well within the Courts, as without; and is derived of the Saxon word Bydder, to call or warne, or of the French word in Normandy Bedeau, a Bailiffe or Apparitor.

¶ A matter of the Game of the Foreſt. 16 E.3.fo.1.a.

¶ Menſis vetitus, fence month, or defence month, ſo called, becauſe it is the fawning month, when the Does have Fawnes, for the preſervation whereof they ought to be fenced, and defended from hurt and diſquiet. It containeth a moneth containing 31 dayes, and beginneth in the fifteenth day before Midſommer (that is, the Nativity of St. John Baptiſt) in the beginning of which a Swanimote is to be holden, and endeth fifteene dayes after. See the ſtatute of Carta de Foreſta, cap.8. whereby it is enacted, quod tertium Swanimotum teneatur in initio 15 dierum ante feſtum Sancti Johannis Baptiſtæ, quando Agiſtatores noſtri conveniunt pro * faonatione ſeu feonatione beſtiarum noſtrarum. Cart. de Foreſta cap.8. * The printed book is *venation*, which ought to be amended, and made *faonation* or *feonation*, which ſignifieth the fawning.

This word faonatio or feonatio, is derived of the French word faonier, that is, to fawne, or for Does to bring forth, &c.

[a] See Rot.Parl.18 E.1.fo.3.nu.37. the puniſhment of a Foreſter for doing treſpaſſe in the Foreſt.

[b] If the King or other Lord doth pardon a treſpaſſe in a Foreſt, and the offender at a Juſtice ſeat by his learned Counſell plead the ſame; in the proceeding thereupon we doe obſerve two things. Firſt, that by the law of the Foreſt, before any allowance thereof, the Juſtices charge the Miniſters of the Foreſt to enquire whether the delinquent hath done any treſpaſſe in Vert or Veniſon after the Date of the pardon. Secondly, when the pardon is allowed, then the entry is, Quod invenit manucaptores quod amodo non forisfac', i. non delinqueret aut peccaret. [c] But if an offender be convicted for treſpaſſe in the Foreſt in hunting, &c. and adjudged to be fined or impriſoned, which fine, though it be paid, yet ſhall he find ſureties for his good abearing, &c. in theſe words: [d] Quod amodo ſe bene geret, & in Foreſta prædicta non forisfac. i. non delinqueret ſeu peccaret. Unde forisfactura pro delicto.

[a] Rot.Parl.18 E.1. fo.3.nu.37.
[b] 8 E.3.Itin. Pick. Sir Ralph Haſtings caſe.
* This is is the word of Carta de Foreſta cap.10.
[c] Ibidem Rob. Saltmerſhes caſe.
[d] Carta de Foreſt. cap.10.
[e] 8 E.3. Itin. Pick. of William de Perſay, and William de Kymthorp fo.165.

[c] By the abſence or non venue of the Juſtices in Eyre at the day of the adjournment, the Juſtice ſeat is diſcontinued, and how and by what meanes it may be recon-

retentinued and reſummoned it appeareth in 8 E.3. Iuriſe Pickering.

7 R.2.cap.3. No Jury ſhall be compelled by any Officer of the Foreſt or any other perſon whatſoever, to give their verdict in any other place, then where their charge is given, againſt their good will, nor by malice, menace, or other dures ſhall be conſtrained to give their verdict of a treſpaſſe in the Foreſt, otherwiſe then their conſciance with clearly informe them. This Law extendeth to Foreſts onely.

Albeit there be ſome beaſts that be no beaſts of Foreſt, as the Buck, &c. and ſome Beaſts and Fowles that be no Beaſts and Fowles of Warren, yet if any man hunt or hawke at them within the Foreſt, it is againſt the Aſſiſe of the Foreſt, and puniſhable by the Lawes of the Foreſt, for all manner of hunting or hawking there without warrant is unlawfull, becauſe it diſquieteth the Beaſts of the Foreſt.

Carta Regis H.1. civibus London'. * *Nota* the Citizens of London had this priviledge before this Charter. 42 E.3.2.3.in Traſis

We reade that King H.1. by his Charter granted, Quod Cives Londoniæ habeant fugationes ſuas ad fugandum ſicut melius, & plenius habuerunt * anteceſſores eorum, ſcilicet Silre, & Middleſex & Suer.

The King being ſeiſed of a Foreſt, did grant the Foreſt to another in fee, the grantee ſhall have no Foreſt, becauſe he hath no power to make Juſtices and Officers of Foreſt to hold Courts, &c. but yet though it cannot take effect ex vi termini, as a Foreſt, yet together with the Game the ſame ſhall paſſe as a free Chaſe for the Savages and Conies; for as hath been ſaid, every Foreſt is a free Chaſe, & quiddam amplius.

Regiſt.8.b. Chacea eſt ad communem legem, and is not to be guided by the Foreſt Lawes, and ſo are Parks.

See the firſt part of the Inſtitutes, Sect.1.verb. Tres ou tents. But if the King doth grant a Foreſt to a Subject, and granteth further that upon requeſt made in the Chancery, he and his heirs ſhall have Juſtices of the Foreſt, then the Subject hath a Foreſt in Law, as the Duke of Lancaſter had the Foreſts of Pickering and Lancaſter, and the Abbot of Whitbye had the Foreſt of Whitbye in the County of York, which being not underſtood, hath beene the cauſe that Readers and others have erred. Vide 12 H.7.Kelw. 13. & 14. & c. 4 E.3.55.Malins caſe. 2 H.6.15. Foreſt de Exmore. 27 H.8. cap.7. 1 E.3.cap.2. 22 E.4.cap.7. 32 H.8.cap.13.

Mich.18 E.1.in Banco Rot.155. Eborum. *Ricardus de Cornubia & 9. alii attach. fuerunt ad reſpondend' Johanni de Sallaye quare ipſum ceperunt, & in priſona detinuerunt per decem ſeptimanas apud Caſtrum de Knaresburgh, &c. Ricardus & alii dicunt quod Caſtrum & Honor de Knaresburgh cum Foreſta de Beſtaine fuit aliquando in ſeiſina Domini H. Regis, patris domini Regis nunc, & eo tempore fuit talis conſuetudo in Foreſta prædicta, quod ſi quis indictatus fuerit per Foreſtarios coram Seneſchallo ejuſdem Honoris de tranſgreſſione de venatione facta in eadem Foreſta, idem Seneſchallus tales tranſgreſſores ubicunque fuerint inventi infra eandem libertatem prædicti Honoris, licitè poteſt arreſtare & impriſonare, & eos in priſona detinere quouſque ſatisfecerint de tranſgreſſione, &c. Qui Rex Hen. dedit prædict' Honorem cum Foreſta, &c. Ricardo fratri ſuo Com' Cornub' patri Edmundi Com' Cornub' qui toto tempore ſuo uſus eſt tali libertate arreſtandi, &c. Johannes è contra dicit, nullam talem fuiſſe conſuetudinem arreſtandi malefactores, niſi quando capti fuerunt cum manupere, & hoc ab antiquiore tempore, quia idem Comes non habet ibidem Foreſtum, ſed Chaceum tantum. Et quod tempore Willielmi de Storevill Domini dictæ Chaceæ qui dedit Regi P. dictam Chaceam, & tempore dicti Regis P. & tempore Regis H. patris, cum dicta Chacea fuit in manu ſua, nunquam arreſtaverunt aliquos de tranſgreſſione in Chacea illa, niſi illos qui capti fuerunt cum manupere, & hoc offert verificare per patriam, &c. Ricardus dicit quod non poſſunt prædictam verificationem ſine prædicto Com' verificare. Ideo præc' eſt vic' quod ſum' prædict' Com', &c.* Conſimile placitum & conſimilis reſponſio in eodem Rotulo. Item in Rot' 163.

By the grant of a Foreſt a Chaſe paſſeth.

Nota, capti cum manupere.

King

King R. 2. granted to Thomas Duke of Gloucester in ſpeciall taile, the Caſtle of Saint Brionel, and the Foreſt of Deane, (whereby nothing paſſed, as hath been ſaid, but a Frank Chaſe) now by authority of Parliament it is enacted, that the ſaid Duke ſhould hold the ſaid Foreſt as a Foreſt, and to conſtitute ſuch Juſtices and Officers, &c. as belong to a Foreſt. Rot. Parl. 14 R. 2. nu. 13.

But what was the title of the Courts of Eyre of Foreſts in the hands of ſubjects? We anſwer, taking one example of the Foreſt of Pickering in the hands of Henry Earle of Lancaſter; Placita Foreſtæ Henrici Comitis Lanc' de Pickering tent' apud Pickering coram Ricardo de Willowby, Jo. de Shardelowe, Roberto de Hungerford, & Johanne de Hanbury, Juſticiariis ad itinerand' hac vice, ad placita Foreſtæ prædictæ in Com' Eborum aſſignat' die Lunæ prox' poſt feſtum Sancti Michaelis, Anno regni Regis E. 3. poſt Conqueſtum 8.

If any felony be committed within the Foreſt, it ſhall be inquired of before the Judges of the Common Law, and doth not belong to the conuſance of the Chiefe Juſtice of the Foreſt. 12 E. 3. coron. 119 Felonia.

Mich. 9 E. 1. coram Rege Rot. 6. Huntingdon. Tranſgreſſio in foreſta Regis pro Venatione Regis non eſt hic terminanda. Tranſgreſſio.

Nota, Before Scroope and other Juſtices in Eire, according to the courſe of the Common Law, a man claimed to be quit of pawnage in the Kings Foreſt, and alſo he claimed in the ſame Foreſt pawnage of his tenant pur agiſtes; and for that this belonged to the Juſtices of the Foreſt, they would not meddle with it. And the reaſon of that is, the words of the ſtatute of Carta de Foreſta cap. 16. Præſententur capitalibus Juſticiariis noſtris de Foreſta, cum in partes illas venerint, & coram eis terminentur. So as the termination and ending thereof belongeth to the Chief Juſtices of the Foreſt, by the expreſſe words of the Statute. And where the Statute ſaith, Coram capitalibus Juſticiariis noſtris, &c. It is to be knowne, that there is but one Chiefe Juſtice of the Foreſts on this ſide Trent, and he is named Juſticiarius itinerans foreſtarum, &c. citra Trentam. And there is another Capitalis Juſticiarius, and he is Juſticiarius Itinerans omnium foreſtarum, &c. ultra Trentam; who commonly is a man of greater dignity then knowledge in the Lawes of the Foreſt. And therefore when Juſtice ſeats are to be holden, there be aſſociated to him ſuch as the King ſhall appoint, who together with him ſhall determine omnia placita, &c. foreſtæ, with a Patent of Si non omnes, and a Writ De admittendo, &c. And the Chief Juſtice of the Foreſt, and theſe aſſociates, are Capitales Juſticiarii foreſtæ, and named Capitales in reſpect of the Verderors and others, that to ſome purpoſes (as hath been ſaid) have inferior judiciall places. V. Cartam de Foreſta cap. 16. Temps E. 3. Kelw. 150. b. V. 21 H. 7. 22. & 30. For theſe aſſociations and other Writs ſee a notable preſident 8 E. 3. Itin. Pick. in the caſe of William of Perſay, &c. fol. 165.

And ſeeing, as it hath before appeared, the Foreſt Lawes differ in many caſes from the common Laws of England, it is good reaſon they ſhould be determined before men learned in the Laws of the Foreſt, as in other caſes. As if a treſpaſſe be done either in Vert or Venſon in any Foreſt in the hands of a Subject, in the life of the anceſtor, Lord of the Foreſt, it ſhall be puniſhed in the life of the heire. But ſo it is not in the Chaſes or Parks of a Subject, for by the Common law Actio perſonalis moritur cum perſona.

If a man committed a treſpaſſe in a Foreſt, and dye, by the Foreſt law the treſpaſſe is diſpunishable, agreeable to the rule of the Common law. 8 E. 3. Itin. Pick. Hugh Latimers caſe.

But by the Statute of 19 H. 7. he that ſhall ſtalk with any buſh or beaſt in any Parke, Chaſe, or Foreſt, without license, &c. ſhall forfeit for every time he ſo ſtalketh x. li. to any perſon that will ſue for the ſame by action of debt, wherein no wager of law, protection, or eſſoine ſhall be allowed, and two Juſtices of Peace may examine the ſame, &c. See the Statute of 1 H. 7. cap. 7. See the third part of the Inſtitutes, cap. Felony. 19 H. 7. cap. 11. In this Act ſee the great penalty for keeping of Nets called Deer-hayes and Buck-ſtals by any that hath not any Foreſt, Park, or Chaſe.

* If a Foreſterſhip or a Bailiwick of a Foreſt be granted in fee, if it be found out at an Eire for the Foreſt, that the grantee hath miſdone in his Bailiwicke, the Bailiwick is forfeited. Nota, the Juſtices in Eire have power to enquire thereof. In theſe offices of Foreſterſhips or Bailiwicks in fee within a Foreſt, albeit they have an abſolute fee ſimple therein, yet are they of ſuch truſt, that * 26 Aſſ. p. 60.

they

Regiſter fo. 257. F.N.B. 226.

they cannot be granted over without the Kings licenſe, and before ſuch licenſe be granted, there goeth out a Writ of Ad quod damnum to the King, if ſuch licenſe ſhall be, &c.

For the beaſts of Chaſe and Warren, and Fowls of Warren being not proper to this Treatiſe, ſee the firſt part of the Inſt. Sect. 378. Rot. Parl. 18 E. 1. nu. 20.

There be many beaſts of the foreſt by the laws of the foreſts of England. The Hart in Summer, the Hinde in Winter, and all that proceed as of them: the Buck in Summer, the Doe in Winter, and the proceed of them: the Hare male and female, and their proceed: the wilde Boar male and female, and their proceed: and the Wolf male and female and their proceed: the Fox male and female, and their proceed, the Martin male and female: Capreolus the Roe, as it appeareth before, is no beaſt of the foreſt, but it is a beaſt of Chaſe.

* Lutra animal amphibium.

But I find that in 18 E. 1. John de Claret was amerced in 100 li. pro uno cervo & duobus * lutris captis in foreſta de Pek, and he petitioned to the King in Parliament to be diſcharged thereof and was denied. Yet I take an Otter is no beaſt of the foreſt: but all hunting in the foreſt, as hath been ſaid, is unlawfull.

The proceads of the Hart and Hinde. The Pale the firſt year a Calf, the ſecond a Broket, the third a Spayad, the fourth a Staggard, the fifth a Stag, the ſixth a Hart, and ſo after. The female, the firſt year a Calf, the ſecond year, a Brockets ſiſter, the third year a Hind.

The proceads of the Buck and Doe. The firſt year a Fawn, the ſecond year a Pricket, the third a Sorell, the fourth a Soze, the fifth a Buck of the firſt head, the ſixth a great Buck.

The proceads of the Hare, the firſt year a Leveret, the ſecond a Hare, the third a great Hare. Of a Wilde Boar: a Pigge, a Hogge, a Hog-ſtear, a Boar, and after a Sanglier.

The ſeaſons by the law of the foreſt for the Beaſts of the foreſts are theſe. Of the Hart and the Buck, beginneth at the feaſt of S. John Baptiſt, and endeth at Holy Rood day. Of the Hinde and Doe, beginneth at Holyrood and continueth till Candlemaſſe. Of the Fox at Chriſtmaſſe, and continueth till the 25 of March. Of the Hare, at Michaelmas, and laſteth till Midſummer. Of the Boze, from Chriſtmaſſe till Candlemaſſe.

Cart. de foreſta, cap. 8. 10. 16. &c. And ſo it is taken 1 Reg. ca. 4. ver. 21. *Venatio Cervorũ*, the veniſon of Harts.

In the ſtatute of Carta de foreſta in divers places Venatio ſignifieth Veniſon in French Venaiſon, and ſo in effect in Dutch and other Languages. It is called Veniſon or Venaiſon, of the mean whereby the beaſts are taken, quoniam ex venatione capiũntur, and being hunted are moſt wholeſome. [a] They are called beaſts of Venary (not Venery as ſome term it) becauſe they are gotten by hunting. No beaſt of the foreſt that is ſolivagũ & nocivũ is veniſon, as the Fox, the Wolf, the Martin, becauſe they be no meat, but caro eorũ eſt nociva: A fortiori, the Bear is no Veniſon not only becauſe he is Animal ſolivagũ & nocivũ, but becauſe he is no beaſt of the foreſt. & whatſoever is Veniſon muſt be a beaſt of the foreſt, ſed nõ è converſo. On the other ſide, Animalia gregalia non ſunt nociva, as the * wilde Boar; for naturally the firſt three years he is Animal gregale, and after truſting to his own ſtrength, and for the pleaſure of man becommeth ſolivagum. He is then called Sanglier, becauſe he is ſingularis, but he is Veniſon and to be eaten. The Hare is Veniſon alſo, which the Poet preferreth before all others:

[a] Ordinatio foreſtæ. cap. 1. 5. *Ariſtotle.*

Ariſtotle. * Sanglier, quia ſingularis.

Martial.

Inter quadrupedes gloria prima lepus.

So as the Red deer, the Fallow-deer, the wilde Boar, and the Hare, are Veniſon. Whereupon theſe two concluſions in the law of the foreſt do follow. Firſt, whatſoever beaſt of the foreſt is for the food of man is Veniſon, and therewith agreeth Virgil, deſcribing a feaſt,

Deer à θὴρ Græc. i. fera bellua κατ' ἐξοχὴν, and their fleſh is called Caro Ferina.

Implentur veteris Bacchi pinguiſq; ferinæ.

They had their belly full of old wine, and fat Veniſon. So Veniſon was the principall diſh of the feaſt.

2. Whatſoever beaſt of the foreſt is not for food of man is no veniſon. Therefore Capreolus being no beaſt of the foreſt, as hath been ſaid, is not by the law of the foreſt Veniſon, for though it be food and taken by hunting, it is no Veniſon. Nature hath endued the beaſts of the foreſt which are Veniſon with two qualities, ſwiftneſſe, and feare, and their fear encreaſeth their ſwiftneſſe.

Pedibus

——Pedibus timor addidit alas: but yet the Deer are the moſt fearfull.

Dente tuetur aper, defendunt cornua taurum,
Imbelles Damæ quid miſi præda ſumus? *Martial.*

Having ſpoken ſomewhat de Venatione, it followeth that we ſhould ſay ſomewhat de Viridi, becauſe the Statute ſaith, Tam de Viridi, quam de Venatione, and other Statutes ſpeak of Vert and Venilon.

De viridi, viretū virectum, &c. Cart. de Foreſt. cap. 8. 16.

* Viridis, Greenhue, à viriditate, the French calleth it Vert, à we Vert, whatſoever beareth green leaf, but ſpecially of great and thick coverts. And Vert is of divers kinds, ſome that beareth fruit that may ſerve as well for food of man as of beaſts, as Pear trees, Cheſnut trees, Apple trees, Service trees, Nut trees, Crab trees, &c. and for the ſhelter and defence of the Game: ſome called b Haut-boys, ſerving for food and browſe of and for the Game, and for the defence of them, as Oaks, Beeches, &c. Some Haut-boys, for browſe and ſhelter and defence onely, as Aſhes, Poples, &c. Of Sub-boys ſome for browſe and food of the Game, and for ſhelter and defence, as Maples, &c. ſome for browſe, and defence, as Birch, Sallow, Willow, &c. ſome for ſhelter and defence onely, as Alder, Elder, &c. Of bushes and other vegetables, ſome for food and ſhelter, as the Hawthorne, Blackthorn, &c. ſome for hiding and ſhelter, as Brakes, Gorſe, Heath, &c. To ſum up all, Plantarum tria ſunt genera: Arbores, Arboreſcentes, & Herbæ. Arbores, as Haut-boys, & Sub-boys. Arboreſcentes, as Bushes, Brakes, &c. Herbæ, as Herbs and Weeds, which albeit they be green, yet our legall Viridis extendeth not to them

chaſe without an incloſure in law, that is, by metes, and bounds. Metæ ſunt clauſuræ Foreſtarum & Chacearum: and Foreſta eſt locus in quo feræ includuntur, venandi ergô, ſolis metis. And where by the ſtatute of 6 E. 1. cap. 18. it is provided, quod omnes metæ Foreſtæ ſint integræ domino regi, that is ſo to be underſtood, quoad juriſdictionem & imperium, & non quoad dominium: for if Rivers or High-ways be bounds, as moſt commonly they be, yet the King hath no more intereſt in the Soil, Way, River, or Fiſhing, then of right he ought, but onely for his juriſdiction of his Foreſt, which extendeth over the whole Way, River, &c. And where Pils and other houſes, trees, &c. of other men, and ſuch like, be metes and bounds of the Foreſts, yet thereby the King hath no intereſt in ſuch Pils, houſes, or trees, &c. And therefore old Woodmen have divided metes, quoad juriſdictionem & imperium, into metes inclusive, as Wayes, Rivers, &c. and into metes excluſive, as Churches, Church yards, Chappels, Pils, Houſes, Trees, &c. which bound the foreſt, but are excluded from any juriſdiction: and that the ſaid law of 6 E. 1. is intended onely of metes inclusive, if any man kill or hunt any of the Kings Deer in any part of the River, High-way, &c. being an inclusive bundary of the Foreſt, he is as great an offender, as if he had killed or hunted within the main continent of the foreſt, albeit the ſtate and intereſt of the ſoil of the High-way or River be in other men; but neither of theſe kinds of metes and bounds are removable, becauſe they are the incloſure of the Kings foreſt, and if either of them be removed, it is puniſhable by the lawes of the foreſt. This word meta is only uſed in this ſtatute: In ancient perambulations and records you ſhall read ſecundum metas, meras, bundas, & * marchias foreſtæ. Mæra is fetched from the Saxon word mere, and that of μείρω Græcè, which ſignifieth to divide or bound. Bunda a bound, is derived from the Saxon word Bunna, ſignifying a higher thing, as Pils, Houſes, Trees, &c. Marchia is derived from the Saxon word March, now a mark. Sed meta accipitur pro quocunque termino, limite, ſeu fine.

* 8 E. 3. Itin' Pick. fo. 6.

Mera.

Bundæ.

Marchia.

Meta.

Virgil. His ego nec metas rerum, nec tempora pono.

Regiſt. Judic. 35, 36. Dier 16 El. 326, 327.

And it is to be obſerved, that a man may have a free Chaſe as belonging to his Mano^r in his own Woods, as well as a Warren or Park in his owne grounds; for the Chaſe, Warren and Park are collaterall inheritances, and not iſſuing out of the ſoil, as the Common doth, and therefore if a man hath a Chaſe in other mens grounds, and after purchaſe the grounds, the Chaſe remaineth.

¶ *Perambulations of Foreſts according to the ancient metes and bounds.* Vid. ſup. pa. 302.

After Eaſter following the Parliament holden in February, Anno 9 H. 3. according to the ſtatute of Carta de Foreſta, Hugh de Nevill, and Brian de Liſle were appointed Commiſſioners to take Inquiſitions of the ancient metes and bounds of ſuch foreſts, as either H. 2. or any King after had inlarged. And in the reign of H. 3. divers Perambulations, and Deafforeſtations were made, and many other in the reigns of H. 2. E. 1. E. 2. and E. 3. &c. All which were returned into the Chancery, and remain of record in the Tower.

Rot. Par. Anno 9 H. 4. nu. 40.

The Commons of Herefordſhire pray remedy againſt the evill cuſtomes of the foreſt of Ewyaſtone; namely, for taking their Cattell comming thereunto as forfeit. Whereunto the royall anſwer of the King in Parliament was in theſe words, The old good laws and cuſtomes of the foreſt to be obſerved, and the contrary forbidden by a writ under the Privy Seal. Regalis ſanè & digna *Plantagineſtorum* genere ſententia, wherewith we will conclude, that new opinions of new Authors, or ſingle opinions of Readers grounded upon the Authorities of our Books or Judiciall Preſidents, are not to be allowed, but the lawes both good and old, and ſpecially the Statute of Carta de Foreſta, and other Statutes, and the reſolution of the Judges thereupon are to be duly obſerved. See alſo the old and juſt Articles of the charge in Fleta lib. 2. cap. 35. and reject all new inventions without warrant of law.

The good old laws of the foreſt to be obſerved.

Nota, the Charge, and Articles inquirable by the good old law of the Foreſt, which is worthy to be adviſedly read and followed. Vid. Lib. 2. fo. 80. Lib. 137, 138. Lib. 9. 49, 50.

Two

Two of the principall and ancient Articles, the one concerning Venifon, and the other concerning Vert. be, Firſt, that the chief Forreſter at the Juſtice Seat ought to anſwer for all manner of Venifon delibered by warrant, or otherwiſe, in this manner: The Twelve Jurors ought to preſent before the Juſtices in Eire the number of Deer that have been killed ſince the laſt Eire, and then the chief Foreſter is to anſwer by what warrant the ſame were killed, and ſuch warrants as are lawfull ought to be allowed, and ſuch as be unlawfull are to be diſallowed. Secondly, the Twelve Jurors ſhall preſent what Okes, Trees, and other woods have been felled and delivered out of the Foreſt by the Officers of the ſame, and they to anſwer and ſhew by what warrants the ſame were done; whereupon it will appear whether the warrants be ſufficient or no, the truth whereof ſhall be enquired by the Foreſters, Verderers, and Regarders. But theſe or any other Miniſter of the foreſt are not to be returned of any Jury out of the foreſt.

8 E. 3. Itin. Pick. fo. 112, 113.

Vide Regiſter, F. N. B. 167. a. 34 E. 1. *The commendation of the Foreſt Laws of England.*

The Lawes of the foreſts of England are certain, and eſtabliſhed by Authority of Parliament, and not, as in other Countries, changeable and floting in uncertainty, ad principis placitum.

The Antiquity of Foreſts.

For the antiquity of ſuch foreſts within England as we have treated of, the beſt and ſureſt argument thereof, is, that the foreſts in England (being in number 69.) except the new foreſt in Hamſhire erected by William the Conqueror, as a Conqueror, and Hampton Court foreſt by H. 8. by Authority of Parliament, are ſo ancient as no Record or Hiſtory doth make any mention of any of their erections and beginnings.

The number of the Foreſts is 69. with the Foreſt of Hampton Court.

Our Anceſtors the Saxons called a Foreſt Buckholt, *i.* ſylva ferina or cervina; We dare not fetch our kind of foreſt, as ſome do, from the holy Hiſtory of Scripture, for therein we find no ſuch foreſts as we have. And it is worthy of obſervation that in the Cuſtumary of Normandy Cap. 10. fo. 17. b. Le ſeneſchal au Prince viſiteit les foreſts & hayes du Prince & ronoquoit les forfeits, &c. So as we fetch not our Chief Juſtice of the foreſt from Normandy, where the Kings Steward was the Chief Judge of the foreſt.

* Holt Saxonicè, Sylva Latinè Levit. 17. 13. 4 Reg. cap. 2. Pſal. 50. 10. Pſal. 80. 14. 104. 29. 4 Eſdr. 5. 15. Jer. 5. 6. Ezech. 31. 6.

And as foreſts are of great Antiquity, ſo the care and charge of them was in England alwayes committed to great and honourable Perſonages, and the like was alſo in forain Nations.

Si canimus ſylvas, ſylvæ ſunt Conſule dignæ. *Virgil.*

For of ancient time the Conſulls of Rome had the government of the foreſts, &c. But take Suetonius as he is, Ab optimatibus datam ſcribit operam ut Provinciæ futuris Conſulibus minimi negotii, *i.* ſylvæ colleſi decernerentur: for to ſay the truth, Recreations ſhould not be uſed as Profeſſions, and Trades, but to be uſed as Medicines, to make men more able and fit for higher and greater affaires, and therefore they are called Recreations, becauſe they newly create ſpirits, tanquam inſtaurationes ſpirituum: but yet theſe pleaſures are accounted inter res minimi negotii. Nonnulli principes immoderato venatus ſtudio ita correpti, & corrupti ſunt, ut ei omnia poſthabeant magno dedecore & ingenti aliorum damno.

Suetonius in Cæſare. Vid. Fleta lib. 2. cap. 35. De veteribus Capit' Foreſtæ. Voluptates commendat rarior uſus.

Hæc bis bina, canes & aves, ſervi atque caballi,
Dicantur dominos ſæpe vorare ſuos.

And to ſay the truth, the Hunter ſitteth on a Beaſt, he is compaſſed about with Beaſts, and hunteth and chaſeth Beaſts: and therefore not to be uſed daily as a Trade. And it was juſtly provided by the Tenth Chapter of this Charter of the foreſt, Quod nullus de cætero amittat vitam pro venatione noſtra, &c. Hereof John Salisbury ſpeaking of hunting and Hunters ſaith, In tantum hujus vanitatis inſtinctu erupere, ut hoſtes naturæ fierent conditionis ſuæ immemores, divini judicii contemptores, dum in vindictam ferarum imaginem dei exquiſitis judiciis ſubjugarent, nec veriti ſunt hominem pro beſtiola perdere quem Unigenitus dei redemit ſanguine ſuo,

Johannes Sarum lib. 1. de nugis Curialium c. 4. Vid. 31 H. 8. c. 12. *quod ciſò evanuit* repealed 1 E. 6. cap. 12. 1 Mar. cap. 1.

Duo clariſſima mundi lumina, Authoritas & Ratio.

Thus have we wandred in the wildernes of the Laws of the Foreſt: Wherein we have diſſented from others, we have produced our Authorities, and ſhewed our Reaſons, the two maine lights and guides, which herein we have followed. We have faithfully publiſhed divers reſolutions of the Judges concerning Foreſts and Foreſt Laws, wherewith we were well acquainted, which are the ſafeſt grounds to build upon. Many things which are evident by the Text of Carta de Foreſta, and other Statutes concerning Foreſts, we have not ſo much as touched, but left the ſame to the judicious Reader, whom we adviſe to beware to give credit to our new Authours, either touching of Acts of Parliament, Book Caſes, or Judgements in Eire, &c. for we have found many of them miſtaken, vouched without warrant, or not underſtood, which the judicious Reader will ſoone finde: nor to Carta de Foreſta of King Canutus granted (as it is publiſhed in print) at a Parliament holden at Winchester, Anno Domini 1016. We confeſſe that in that yeare, which was the firſt yeare of his reigne, he held a Parliament at Winchester, and made divers Lawes as well for the honour and worſhip of Almighty God, as for the good government of his people, which he publiſhed in the Saxon Tongue, (neither doe we read, that he ever publiſhed any Law for England in the Daniſh tongue, as they affirme he did this.) In al theſe Lawes he never maketh mention of this Carta de Foreſta, or of any theſe ſuppoſed Lawes of the Foreſt therein contained, which he had juſt occaſion to doe; for amongſt his other lawes at the ſame Parliament, he maketh this Law the 77. Chapter in the Saxon Tongue, which is thus tranſlated into Latine: præterea autem concedo ut in propriis ipſius prædiis quiſque tam in agris quam in ſylvis excitet agitétque, feras autem meas ne venetur cum pœna præcipio. Now in the ſuppoſed Carta de Foreſta of King Canutus, in the 30. Chapter, it is thus contained: Volo ut omnis liber homo pro libito ſuo habeat Venerem ſeu Viridem in planis ſuis, ſine Chaſea tamen: & devitent omnes meam ubicunque eam habere voluero. Which we hold greatly to differ from the true Law before rehearſed in two reſpects. Firſt, that the true Law extended to Woods as well as to Plains, and this to Plaines onely. Secondly, by that they might hunt, &c. by this they cannot; therefore we leave that Carta de Foreſta of King Canutus as juſtly ſuſpected, till we receive better proof of them: whatſoever it be it is of little uſe, for ſo many of the Chapters therein as be contrary to, or differing either from our Magna Carta de Foreſta, or any other Act of Parliament, are certainly of no force.

Manwood fo. 1.

Thus have we as briefly as we could, treated of the Courts of the Foreſt, and incidently of ſuch Foreſt Lawes as now ſtand in force; wherein (as the ſtudious Reader may well perceive) we have reſpected matter more then method. See Carta de Foreſta Anno 9 H. 3. & Cart. 17. Regis Johannis. Matth. Par. pag. 264.

CAP.

CAP. LXXIV.

Of Eccleſiaſticall Courts, anciently called Halimots, (i. Holy Courts) Circgemots, or Chircgemots.

WHere ſome may doubt, how we that profeſſe the Common Law ſhould write of Eccleſiaſticall Courts, which proceed not by the rules of the Common Lawes. To this we anſwer by good authority in our Bookes, that the Kings Laws of this Realme doe bound the juriſdiction of Eccleſiaſticall Courts, and that the King is well apprized of all [a]his Judges which he hath within his Realme, as well ſpirituall as temporall, as Archbiſhops, Biſhops, and their Officers, Deanes, and other Miniſters, which have [b] ſpirituall juriſdiction. And that the Popes Collector or Miniſter (ſo ſay our ancient Bookes) had no juriſdiction within the Realme.

2 H.4.9. Rot.clauſ.4 H.4. m.11.optime. Rot.clauſ.11 E.2. Dorſ.

[a] Nota, the Kings Judges.

[b] Spirituall juriſdiction.

And it is declared by the King, the Lords Spirituall and Temporall, and the Commons in full Parliament, [c] That the Spiritualty (now being uſually called the Engliſh Church) alwayes hath been reputed, and alſo found of that ſort, that both for [*] knowledge, integrity and ſufficiency of number it hath been always thought, and is alſo at this houre ſufficient and meet of it ſelfe, without the intermedling of any exterior perſon or perſons, to declare and determine of ſuch doubts, and to adminiſter all ſuch offices and duties as to their rooms [d] ſpirituall doth appertain: for the due adminiſtration whereof, and to keep them from corruption and ſiniſter affection, the Kings moſt noble Progenitors, and the anteceſſors of the Nobles of this Realme have ſufficiently endowed the ſaid Church both with honour and poſſeſſions. And the Lawes Temporall for triall of property of lands and goods, and for the conſervation of the people of this Realme in unity and peace, without rapine or ſpoile, was and yet is adminiſtred, adjudged, and executed by ſundry Judges and Miniſters of the other part of the ſaid body politique, called the Temporalty: and both their authorities and juriſdictions doe conjoyne together in the due adminiſtration of Juſtice, the one to help the other.

[c] 25 H.8.cap.21.

[*] If ſo, then much more at this day. See before pag. 43.

[d] The Spirituall juriſdiction.

The Temporall juriſdiction.

Of what things the Clergy hath ſpirituall juriſdiction, is evident in our Bookes, and particularly in Cawdries Caſe, whereof there is no queſtion. And certain it is, that this Kingdome hath been beſt governed, and peace and quiet preſerved, when both parties, that is, when the Juſtices of the Temporall Courts, and the Eccleſiaſticall Judges have kept themſelves within their proper juriſdiction, without incroaching or uſurping one upon another; and where ſuch incroachments or uſurpations have been made, they have been the ſeeds of great trouble and inconvenience; for preventing and avoyding whereof, we have compoſed this Treatiſe of the Eccleſiaſticall Courts of the Realm.

Of what things they have juriſdiction. *Articuli Cleri per totum, lib 5. fo.1. Caudries* caſe.

The Adverſary hath made divers objections againſt our Archbiſhops and Biſhops made about the beginning of the reign of Queene Elizabeth, and by conſequent againſt the Biſhops ever ſince. [e] Firſt, that they were never conſecrated according to the Law, becauſe they had not three Biſhops at the leaſt at their Conſecration, nay never a Biſhop at all, as was pretended; becauſe they being Biſhops in the reign of E.6. were deprived in the reign of Queen Mary, and were not (as was pretended) reſtored before their preſence at the Conſecration. Theſe pretences being (in truth) but meer cavils, tending to the ſcandall of the Clergy (being one of the greateſt States of the Realm, as it is ſaid in the Statute of 8 Eliz.cap.1.) are fully anſwered by the ſaid Statute, and proviſion made by authority of that Parliament for the eſtabliſhing of the Archbiſhops

See before cap. of the Chancery, the Articles againſt Cardinall *wolſey*. Art. 1 13. 14.17,18,19. 22. 24,25.29,30. Bract.lib.5.cap. 2. &c. Britton fo.10.b. Rot.Parl. 15 E.3. nu.22.

[e] See Dier.Mich. 6. & 7 Eliz.

8 Eliz.cap.1.

and

and Biſhops both in præſenti and in futuro, in their Biſhopricks. Of this Statute Archbiſhop Parker in his Book De antiquitate Britannicæ Eccleſiæ ſpeaking of himſelfe ſaith, Anno Domini 1559. Cantuar' Epicopus electus eſt à Decano & capitulo Eccleſia Metropoliticæ Cantuar': poſteaque eodem Anno 17 Decembris adhibitis quatuor Epiſcopis, &c. lege quadam de hac re lata, requiſitus conſecratus eſt. Another objection was made againſt our Archbiſhops and Biſhops, for that the Commiſſion (being never inrolled) whereby the Biſhops made in Queen Maries time were deprived before the fourth year of the reigne of Queen Elizabeth: or the Record of the approbation of them cannot be found: therefore it was pretended that the Archbiſhops and Biſhops made by Queen Elizabeth, living the former, ſhould be no lawfull Biſhops. But by the Statute of 39 Eliz. cap. 8. the Archbiſhops and Biſhops are adjudged lawfull, as by the ſaid Act appeareth. And by theſe two Statutes, theſe and all other objections againſt our Biſhops are anſwered, which we have thought good to remember, ſeeing we are to treat of their jurisdiction, ut obſtruatur os iniqua loquentium.

Parker in libro de antiquitate Britannicæ Eccleſiæ. ſub titulo *Matthæus*. Imprinted 1572. 13 Eliz.

39 Eliz. cap. 8.

¶ *Of the Court of Convocation.*

The Name. F. N. B. 269. H. Regiſter. fo. See the firſt part of the Inſtitutes Sect. 133. 23 H. 8. cap. 1. 32 H. 8. cap. 23. & 33 H. 8 ca. 31. Anciently called Churchgemote. Int. leges Hen. 1. cap. 8. Quoſque Churchgemot diſcordantes inveniet, vel amore congreget, vel ſequeſtret judicio. * 21 E. 45, 46.

It is called the Convocation of the Clergy. In England there being two Provinces, the one of Canterbury and the other of York, the Biſhops and Suffragans belonging to York, are the Biſhops of Dureſme, Carliſle, Cheſter, and the Iſle of Man, and all the reſt of the Biſhops are within the Province of Canterbury.

In domo Convocationis the whole Clergy of either Province are either preſent in perſon, or by repreſentation: but theſe Provinces and they onely ſit in the Parliament time, and this conſiſteth of two parts, viz. the Upper houſe, where the Archbiſhops and Biſhops ſit, and the Lower houſe where the reſt doe ſit.

Beda. ¶ *The antiquity* Newburgh lib. 2. cap. 13. Bract. lib. 3. fo. 123, 124. 6 H. 3. Hol. 203. Rot. Parl. 18 E. 3. nu. 1. Rot. Parl. 2 H. 4. nu. 29. F. N. B. 269. 8 H. 6. cap. 1.

Anno Domini 686 Auguſtine aſſembled in councell the Britain Biſhops, and held a great Synod.

¶ *By what authority aſſembled.* 13 E. 3. Rot. Parl. 16. 24. Dorſ. clau. 17 E. 2. m. 30, 31. 25 H. 8. cap. 19.

The Clergy was never aſſembled or called together at a Convocation but by the Kings * Writ, adjutoria Regis, as Beda ſaith, ubi ſupra. Vid. Parl. 18 E. 3. nu. 1. Int. leges Inæ Anno Domini 727. a Convocation of the Clergy called Magna ſervorum Dei frequentia.

¶ *What their juriſdiction was.* Merton cap. 9. 21 E. 4. 45. 1. per Vavaſor. & b. per Starkey, Brown & Vavaſor. 20 H. 6. 13. 34 H. 6. 39. 28 H. 6. 11. Regiſt. fol. F. N. B. 269. *a De procurat. Cler.* See in the Chapter of the High Court of Parliament, Regiſt' 261. F. N. B. 229. a. & Parl. 6 E. 3. nu. 6. 8 H. 6. cap. 1. * 2 Chron. 29. 15. *Ezechiæ.* Num. ca. 10. v. 1, 2. vid. ſup. pa. 43.

Their juriſdiction was to deal with Hereſies, Schiſmes, and other meer Spirituall and Eccleſiaſticall cauſes, and therein they did proceed juxta legem divinam & Canones ſanctæ Eccleſiæ. [a] And as they could never aſſemble together of themſelves, but were alwayes called together * by the Kings Writ, ſo were they oftentimes commanded by the Kings Writ to deal with nothing that concerned the Kings lawes of the land, his Crown and dignity, his Perſon, or his State, or the ſtate of his Councel or Kingdome: as to illuſtrate this matter to remember one or two examples.

Rot. Par. 18 H. 3. 2 part. m. 17. De prohibitione fact. Epiſcopis.

Mandatũ eſt omnib⁹ Epiſcopis qui conventuri ſunt apud Glouceſtriam die Sabbathi in craſtino Sanctæ Katharinæ firmiter inhibendo quod ſicut Baronias ſuas (quas de Rege tenent) diligunt, nullo modo præſumant conſilium tenere de aliquibus quæ ad coronam Regis pertinent, vel quæ perſonam Regis vel ſtatum ſuum, vel ſtatum concilii ſui contingunt. Sciturí pro certo quod ſi fecerint, Rex inde ſe capiet ad Baronias ſuas. Teſte Rege, &c.

See

See the Statute of Carliſle Anno 35 E. 1. Stat. de Carliſle 35 E. 1.

Rex, &c. Venerabilibus in Chriſto patribus eadem gratia W. Archiepiſcopo Cantuarienſi, totius Angliæ Primati, ac cæteris Epiſcopis & Prælatis Cant' Provinciæ ad Concilium Provinciale apud London in proximo conventuris. Mandamus vobis in fide & dilectione quibus nobis tenemini firmiter inhibentes ne in dicto Concilio quicquid in noſtri, aut ſtatus Coronæ noſtræ vel regni noſtri præjudicium ſtatuatis, faciatis, ſeu quoquo modo libet ordinetis. Teſte Rege, &c. Rot. Pat. 15 E. 2. 1 part. m. 8 pro Rege de inhibitione faciendâ.

De iſto negotio ſcribitur præfatis Prælatis per literas de credentia, ut in Rotulo clauſarum ſub eodem Datu continetur.

Prohibitio fact' Archiepiſcopo Cant' & Clero conventui poſt feſtum Sancti Barth. quod nihil attemptent in præjudicium Coronæ. 6 E. 3. dorſ. clauſ. part. 2, m. 15. &c.

Vide Cap. Of the High Court of Parliament, pag. 4. & 5. a. for Procuratores Cleri, & 21 R. 2. cap. 2.

And further the King did often appoint Commiſſioners by Writ to ſit with them at the Convocation, and to have conſultans of ſuch things as they meant to eſtabliſh, that nothing ſhould be done in prejudice, ut ſupra. * And therefore the ſtatute of 25 H. 8. ca. 19. (whereby it is provided, that no Canons, Conſtitution, or Ordinance ſhould be made or put in execution within this Realm by authority of the Convocation of the Clergy, which were contrariant or repugnant to the Kings Prerogative Royall, or the Cuſtomes, Lawes, and Statutes of this Realm) is but declaratory of the old Common law. 51 E. 3. nu. 42. 46 E. 3. prem. 8. 21 E. 4. 45 ubi ſup. Rot. Parl. 1 R. 2. nu. 114. * 25 H. 8. cap. 19. 19 E. 3. Quare non admiſit acc' 10 H. 7. 6. per Brian. & 2 Ph. & Mar. cap. 8. the Prerogatives, and Lawes of the Crown ſaved. *Verſus finem.*

But by the ſaid Act of 25 H. 8. their juriſdiction and power is much limited and ſtraitned concerning their making of new Canons: for they muſt have both licenſe to make them, and after they be made, the Kings Royall aſſent to allow them, before they be put in execution. But in the end of that Act there is an expreſſe Proviſo, that ſuch Canons as were made before that Act, which be not contrariant nor repugnant to the Kings Prerogative, the Lawes, Statutes or Cuſtomes of the Realm, ſhould be ſtill uſed and executed as they were before the making of that Act. But before that Act a Diſme granted by the Clergy at the Convocation, did not bind the Clergy before the Kings Royall aſſent. ¶ *What their juriſdiction now is.* 2 R. 3. 4. 21 E. 4. 42. 47. 20 H. 6. 13.

King H. 8. was acknowledged Supream Head in divers Convocations. 26 H. 8. cap. 1.

And if any cauſe ſhall depend in contention in any Eccleſiaſticall Court which may or ſhall touch the King his Heirs, or Succeſſors, the party grieved ſhall or may appeale to the Upper houſe of Convocation within 15 dayes after ſentence given. 24 H. 8. ca. 12. 1 Eliz. cap. 1.

As there be two houſes of Convocation, ſo are there two Prolocutors, one of the Biſhops of the Higher houſe, choſen by that houſe, another of the Lower houſe, and preſented to the Biſhops for their Prolocutor.

It is called Convocation à Convocando, becauſe they are called together by the Kings Writ.

The Clerks of the Convocation called by the Kings Writ, and their ſervants and familiars ſhall have ſuch privilege in comming, tarrying, and going, as the great men, and Comminalty of this Realm, called to the Kings Parliament. 8 H. 6. cap. 1.

ℂ *Of Subſcription.*

Subſcription required by the Clergy is twofold: one by force both of an Act of Parliament confirming & eſtabliſhing the 39 Articles of Religion agreed upon at a Convocation of the Church of England, and ratified by Queen Elizabeth under the Great Seal of England. Another by Canons made at a Convocation of the Church of England, and ratified by King James, as is aforeſaid.

By the Act of 13 Eliz. cap. 12. referring to Canons made by the Clergy of England at a Convocation holden at London in Anno Domini 1562. containing 39 Articles of Religion, and ratified as is aforeſaid. 13 Eliz. ca. 12. At a Convocation holden at London Anno Dom. 1562. & 40 Eliz.

The

At a conuocation begun at Londō, Anno dñi 1603. 1 Iac. Regis §. 36.

The other is by Canons of the Church of England made and ratified by King James, as is aforeſaid.

The ſubſcription hereby required is to three Articles.

The firſt is, that the Kings Majeſty under God is the only ſupreame Gouernor of the Realm, and of all other his Highneſſe Dominions and Countries, &c.

This Book is ratified and confirmed by Act of Parliament, viz. 2 E. 6. cap. 1. 5 E. 6. 1. 1 El. cap. 2. 8 El. cap. 1. 23 El. ca. 1.

2. That the Booke of Common prayer, and of ordering of Biſhops, Prieſts, and Deacons, containeth nothing in it contrary to the Word of God, &c.

3. That he alloweth of the ſaid 39. Articles of Religion, and acknowledgeth them to be agreeable to the Word of God.

And in this Section, Ubi ſupra, 1 Jac. The forme of the ſubſcription is ſet downe, which was not expreſſed in the Act of 13 Eliz.

By the Statute of 13 Eliz. the Delinquent is diſabled and depriued ipſo facto, but the Delinquent againſt the Canon of King James is to be proceeded withall by the cenſures of the Church. This ſtatute of 13 is well expounded in Dier 23 El. 377. & lib. 6. fo. 69. in Grenes caſe.

Dier 23 El 377. Lib. 6. fo. 69. Grenes caſe. * Smiths caſe.

And I heard Wray Chief Juſtice in the Kings Bench, * Paſch. 23 El. report, that where one Smith ſubſcribed to the ſaid 39 Articles of Religion, with this addition (ſo far forth as the ſame were agreeable to the Word of God) that it was reſolued by him, and all the Iudges of England, that this ſubſcription was not according to the Statute of 13 Eliz. becauſe the ſtatute required an abſolute ſubſcription, and this ſubſcription made it conditionall; and that this Act was made for auoiding of diuerſity of opinions, &c. And by this addition the party might by his own priuate opinion take ſome of them to be againſt the Word of God; and by this means diuerſity of opinions ſhould not be auoided, which was the ſcope of the Statute, and the very Act it ſelfe made touching Subſcription hereby of none effect.

He muſt alſo bring a teſtimoniall from men known to the Biſhop, to be of ſound Religion, a teſtimonial both of his honeſt life, and profeſſion of the doctrine expreſſed in the ſaid Articles; and he ought to be able to anſwer, and render to the Ordinary an account of his faith in Latin, &c.

Beſides this ſubſcription, when any Clerk is admitted and inſtituted to any Benefice, he is ſworn to Canonicall obedience to his Diocеſan.

¶ *Of the High Commiſſion in cauſes Eccleſiaſticall.*

Paſch. 9 Jac. the reſolution of the Court of Common Pleas upon mature deliberation, ſet down in writing by the commandment of King James.

Two queſtions haue been made concerning the Iuriſdiction of theſe Commiſſioners.

Firſt, what cauſes doe belong to the High Commiſſioners by force of the Act of 1 El. cap. 1. and of the Letters Patents thereupon grounded.

Secondly, in what caſes the High Commiſſioners by the ſaid Act of 1 Eliz. cap. 1. and of the Letters Patents to them granted, may impoſe fine and impriſonment, and in what not.

It is ſaid, by force of the ſtatute of 1 El. For that before this Act it is agreed, that all Ordinaries and Eccleſiaſticall Iudges whatſoeuer, ought in all Eccleſiaſticall cauſes to haue proceeded according to the cenſures of the Church, and could not in any caſe haue puniſhed any Delinquent by fine or impriſonment, unleſſe they had authority ſo to doe by Act of Parliament. And the Papall authority (as hath been confeſſed) did neuer fine or impriſon in any caſe, but euer proceeded onely by Eccleſiaſticall cenſures. Seeing then the ſtate of the queſtion concerning fine and impriſonment dependeth wholly upon the ſtatute of 1 Eliz. and is of greateſt conſequence, and openeth the way to the other queſtion, for it in confeſſed that by Letters Patents onely (without an Act of Parliament) ſuch power to fine and impriſon in Eccleſiaſticall cauſes cannot be granted: the point of fine and impriſonment ſhall be firſt handled. And for that euery Act of Parliament doth conſiſt of the letter, and of the meaning of the makers of the Act:

the

the Act of 1 Eliz. doth neither by meaning nor letter give any power to the High Commiſſioners to fine or impriſon any, but in certain particular cauſes, as ſhall manifeſtly out of the Act it ſelfe appeare hereafter. And ſeeing every Act of Parliament upon conſideration had of all the parts thereof together, is the beſt Expoſitor of it ſelf, the parts of this Act of 1 Eliz. doe neceſſarily fall into conſideration.

The title of the Act.

First the Title of the Act is *An Act reſtoring to the Crown the ancient Juriſdiction, &c.* By this the nature of the Act doth appear to be an Act of Reſtitution.

The preamble of the Act.

And this is alſo manifeſt by the preamble of the Act, where it is ſaid:

Whereas divers good laws were made in the time of the late King Henry the Eight, for the extinguiſhment of all forain power, and for the reſtoring unto the Crown of this Realm the ancient rights and Juriſdictions of the ſame.

1 *Ratio.*

From whence this reaſon is drawn, that ſeeing the expreſſe letter and meaning is to reſtore to the Crown the ancient Juriſdiction Eccleſiaſticall, and no Commiſſioner by force of that ancient Eccleſiaſticall Juriſdiction could impoſe fine and impriſonment, that theſe Commiſſioners having their force from this Act of Reſtitution, cannot puniſh any party by fine or impriſonment, otherwiſe then ſhall be hereafter expreſſed.

The firſt clauſe of the body of the Act (to let in the reſtitution of the ancient Right and Juriſdiction Eccleſiaſticall within the Realm) doth aboliſh all forain Juriſdiction out of the Realm.

Then followeth the principall clauſe of reſtitution and uniting of the ancient Juriſdiction Eccleſiaſticall, being the main purpoſe of the Act, in theſe words.

Be it enacted, that ſuch Juriſdiction, &c. Spirituall or Eccleſiaſticall, as by any Spirituall or Eccleſiaſticall power or authority hath heretofore been, or lawfully may be exerciſed or uſed for the viſitation of the Eccleſiaſticall ſtate and perſons, and for reformation, order, and correction of the ſame, and of all manner of Errors, Hereſies, Schiſmes, abuſes, offences, contempts, and enormities, ſhall for ever by Authority of this Parliament be united and annexed to the Imperiall Crown of this Realm.

And upon this clauſe being the finall intention of this Act expreſſed in the Title and Preamble, doe the ſubſequent clauſes depend; Therefore this clauſe is eſpecially to be conſidered, and therein theſe things are to be obſerved.

First, that by this clauſe Queen Elizabeth was not declared Supream head, &c. but by a former clauſe in this Act, viz. that the Statute of 1 & 2 Ph. & Mar. cap. 8. (whereby amongſt others, the Act of 26 H. 8. cap. 1. and 35 H. 8. cap. 3. were repealed) was by this Act made utterly void, and conſequently the Act of Repeal being repealed, the Acts of 26 H. 8. cap. 1. and 35 H. 8. cap. 3. were amongſt others implicite revived, by which Acts of 26 H. 8. and 35 H. 8. It is declared and enacted, that the King, his heirs and ſucceſſors ſhould be taken and accepted the only ſupream Head in earth of the Church of England, and ſhould have and enjoy annexed to the Imperiall Crown of this Realm, as well the title and ſtile thereof, as all honours, dignities, preheminences, juriſdictions, &c. to the ſaid dignity of ſupream Head belonging, &c. By which ſtile, title, and dignity of ſupream Head of the Church of England, King H. 8. his heirs and ſucceſſors had and have all Eccleſiaſticall Juriſdiction whatſoever. So as the firſt clauſe reviving the Act of 26 H. 8. &c. thereby Queen Elizabeth, her heirs and ſucceſſors were ſupream Head of the Church of England. And there this Act extending to raiſe a Commiſſion for the neceſſity of the time, intended only to reſtore and anner to the Crown ſuch Juriſdiction in ſome particular points as by the intent of the Statute, the Commiſſioners ſhould execute, and not to de-

clare by this clauſe that her Majeſty ſhould be ſupream Head of the Church, for that was provided for before.

2 *Ratio.* Secondly, that no jurisdiction is by this Act reſtored & united to the Crown, but ſuch as before the Act had been, or lawfully might be exerciſed or uſed for the reformation, &c. correction, &c. Whereupon it is concluded, that ſeeing that no man could be fined or impriſoned by force of any Jurisdiction Eccleſiaſticall, which had been uſed, or lawfully might be uſed before this Act, that therefore by this Act no power of fining and impriſoning in Eccleſiaſticall cauſes is given by this Act.

The third obſervation is, that this clauſe divideth it ſelfe into two branches: the firſt concerning the viſitation of the Eccleſiaſticall ſtate and perſons. This branch was enacted out of neceſſity, for that all the Biſhops, and moſt of the Clergy of England, being then Popiſh, it was neceſſary to raiſe a Commiſſion to deprive them, that would not deprive themſelves, and in caſe of reſtitution of religion to have a more ſummary proceeding then by the ordinary and ſtrict courſe of law is required. This branch concerns only Eccleſiaſticall perſons: So as, as neceſſity did cauſe this Commiſſion, ſo it ſhould be exerciſed but upon neceſſity, for it was never intended that it ſhould be a continuall ſtanding Commiſſion, for that ſhould prejudice all the Biſhops of England in their Eccleſiaſticall Jurisdiction, and be grievous to the ſubject to be drawn up from all the remote parts of the Realm, where before their own Diocesan they might receive juſtice at their own doors.

The firſt Commiſſion upon theſe Statutes, whereby about 20 Biſhops were deprived, and many others of the Popiſh Clergy, is ſaid to be loſt, and inrolled it is not, as it ought to have been. And it is affirmed by ſome that have ſeen it, that it paſſed not above twenty ſheets of paper copy wiſe; but now the High Commiſſion contains above three hundred ſheets of paper. And it is likewiſe affirmed, that never any High Commiſſion was inrolled (as they all ought to have been) untill my Lord Chancelor Egertons time, ſo as no man before that time could know what their Jurisdiction was till that time.

The ſecond branch is, And for reformation, order, and correction of the ſame (*that is, of Eccleſiaſticall perſons*) and of all manner of Errors, Hereſies, Schiſmes, abuſes, offences, contempts, and enormities.

So as theſe two branches extend not to the univerſality of the Supremacy, but only to thoſe points whereunto the Commiſſion to be raiſed by this Act ſhould extend, for which purpoſe nothing is reſtored or united by this Act, but only the viſitation of the Eccleſiaſticall ſtate and perſons, and the reformation of the ſame, and of all Errors, Hereſies, Schiſmes, abuſes, offences, contempts, and enormities which be criminall.

The jurisdiction being reſtored to Queen Eliz. her heirs and ſucceſſors, next and immediately doth the Act, &c. give her power to aſſign and authoriſe Commiſſioners to execute this jurisdiction reſtored and united to her, for which purpoſe it is further enacted, That your Highneſſe, your heirs and ſucceſſors ſhall have power and authority by vertue of this Act by Letters Patents, &c. to aſſigne, name, & authorize, &c. ſuch perſons being naturall born ſubjects, &c. as your Majeſty, your heirs and ſucceſſors ſhall think meet to exerciſe, uſe, occupy, and execute under your Highneſſe, your heirs and ſucceſſors, all manner of juriſdiction, &c. in any wiſe touching or concerning any Spirituall or Eccleſiaſticall juriſdiction, &c. and to viſit, reforme, &c. all errours, hereſies, ſchiſmes, abuſes, offences, contempts and enormities, which by any manner Spirituall or Eccleſiaſticall power, authority, or juriſdiction can or may lawfully be reformed, corrected, reſtrained or amended.

The clauſe of Aſſignation of the Juriſdiction reſtored by this Act.

Out of this clauſe of Aſſignation it is to be obſerved, that the ſubſtance of the Commiſſion of aſſignation or deputation is deſcribed and purtraped out both for manner and matter by this clauſe.

1. That it ought to be under the Great Seal.

2. The Commiſſioners to be aſſigned ought to be naturall borne ſubjects of Queen Eliz. her heirs or ſucceſſors.

3. Their Authority, viz. To exerciſe, uſe, occupy, and execute under your Highneſſe, your heirs and ſucceſſors, all manner of jurisdiction, &c. and to viſit, and reform all ſuch Errors, Hereſies, Schiſmes, abuſes, offences, &c. which by any manner of Eccleſiaſticall or Spirituall power can, or lawfully may be reformed, corrected, &c.

4. The locall limits and bounds of their Commiſſion, viz. within the Realm of England, &c.

So as by this clauſe there is no queſtion, but the Commiſſioners for ſuch cauſes as are committed to them by force of this Act, may, if the Commiſſioners be competent, proceed to deprivation of the Popiſh Clergy, which was the main object of the Act, or to puniſh them by Eccleſiaſticall cenſures, and by no words, or meaning hitherto can puniſh by fine or impriſonment, for that no Eccleſiaſticall power could reform and correct (as the ſtatute ſpeaketh) in that manner. And without queſtion, if the Commiſſioners be competent, that is, if they be ſpirituall men, they may proceed to ſentence of Excommunication, which may right well be certified as well as Excommunication before Commiſſioners Delegates; both of theſe Authorities being under the Great Seal, and each of them having authority by force of ſeverall Acts of Parliament. And Excommunication certified by Commiſſioners Delegates hath been allowed, as it appeareth in 23 Eliz. Dier 371. And in many caſes Acts of Parliament have adjudged men excommunicate ipſo facto. But if they be meer Lay men, the fault is not in the ſtatute or in the law, but in the nomination: and upon Certificate made of the Excommunication according to law, a Significavit or Cap. Excom. ſhall be awarded out of the Chancery, for the taking and impriſoning of the bodies of ſuch excommunicate perſons.

3 *Ratio.*

The High Cõmiſſioners may excõmunicate if they be competent. Dier 23 El. 371.

Now after the Letters Patents of the Commiſſion are deſcribed, and limited, followeth a clauſe of direction for the Commiſſioners to keep themſelves within their Commiſſion in theſe words.

And that ſuch perſons ſo to be named, &c. after the ſaid Letters Patents to them delivered ſhall have power and authority by vertue of this Act and the ſaid Letters Patents under your Highneſſe, your heirs and ſucceſſors to exerciſe, uſe and execute all the premiſſes according to the tenor and effect of the ſaid Letters Patents, any matter or cauſe to the contrary in any wiſe notwithſtanding.

The clauſe of Execution.

This is a clauſe of reference meerly to the former parts of the Act, and yet by colour of this clauſe the High Commiſſioners doe pretend to fine and impriſon.

That this clauſe referreth wholly to the former parts of the Act, it is apparent by the very words thereof, for firſt, the words be to exerciſe, uſe, and execute all the premiſſes, which word (premiſſes) referreth to all the former branches of the Act, viz. 1. To the ancient jurisdiction Eccleſiaſticall, reſtored by this Act, by which ancient jurisdiction no perſon could be corrected by fine or impriſonment. 2. To ſuch jurisdiction Spirituall or Eccleſiaſticall, as by any Spirituall or Eccleſiaſticall power hath heretofore been, or lawfully might be exerciſed, or uſed; for theſe be the expreſſe words of the maine clauſe of reſtoring & uniting of the ancient jurisdiction to the Crown. But it is agreed, that before this Act no man could be puniſhed by fine or impriſonment by any Eccleſiaſticall power, unleſſe it were by force of ſome Act of Parliament; therefore by theſe words in this clauſe (to execute the premiſſes) the Commiſſioners cannot fine or impriſon. This word (premiſſes) hath relation to theſe words in the clauſe of aſſignation next going before this clauſe, viz. to viſit, reform, redreſſe, order, correct, and amend all ſuch errors, hereſies, ſchiſmes, &c. which by any manner, power, authority, or juriſdiction Eccleſiaſticall or Spirituall can, or may lawfully be reformed, &c. corrected, &c. but no correction before this Act could be by fine or impriſonment, but in certain ſpeciall caſes.

Then this clauſe followeth, (according to the tenor and effect of the ſaid Letters Patents) which words alſo doe wholly refer to the former parts of the Act. For if theſe words (to execute all the * premiſes) be words of reference, then the addition of theſe (according to the tenor and effect of the * ſaid Letters patents, any matter or cauſe to the contrary in any wiſe notwithſtanding) muſt of neceſſity be referred alſo to the former parts of the Act, by none of which power is given to fine or impriſonment.

* Premiſes.
* Said.

Alſo this word (execute) cannot but be referred to the former authority. And it is not ſaid according to the tenor and effect of any Letters Patents, and yet if the words had been ſo, the ſame being coupled to the word (premiſes) had not reſtrained them, for they could in that caſe but only have executed the premiſes; but the words be according to the tenor and effect of the Letters Patents before limited by the ſaid Act, that is, firſt that the Letters Patents be under the Great Seal. 2. That they be made to naturall born ſubjects. 3. Their authority is declared with a limitation. 4. The locall limits and bounds of the Commiſſion is ſet down: and it is the true and genuine ſenſe of theſe words, *viz.* To execute the premiſes according to the tenor and effect of the ſaid Letters Patents. And therefore we marvell how in a caſe of ſo great conſequence, and ſo viſible to every eye that looks into the Act of 1 Eliz. the very words thereof are (for the advantage of the High Commiſſioners) in the very binding clauſe altered, and changed. For there it is alleaged, that the ſtatute of 1 Eliz. ſaith, that the High Commiſſioners ſhall execute the premiſes by vertue of this Act according to their Commiſſion indefinitely without reference or reſtraint, whereas the words of the Act be, according to the ſaid Letters Patents, the effect whereof was limited and expreſſed before. And by the authority that is claimed by the Commiſſioners, who ſeeth not, but that confiſcation of lands, forfeiture of goods and chattels, &c. as well may be impoſed, as fine and impriſonment? But were it not a violent interpretation directly againſt the letter and meaning of the Act, and full of great inconvenience to make of theſe latter words this conſtruction, viz. that the High Commiſſioners ſhould correct and puniſh all the Errors, Hereſies, Schiſmes, Offences, Abuſes, Contempts, and Enormities, &c. under ſuch pains, forfeiture, and penalty, as Queen Elizabeth, her heirs, and ſucceſſors, by any Letters Patents, ſhould impoſe or appoint; and that conſequently by force of the generality of this conſtruction, ſhe did impoſe and appoint fine and impriſonment. Which conſtruction ſhould be firſt directly againſt the words and meaning of the Act for the cauſes aforeſaid. Secondly, that by the ſame reaſon by the generality of ſuch a conſtruction Queen Elizabeth might have impoſed forfeiture of lands, confiſcation of goods, nay corporall puniſhment, loſſe of member, and of life alſo, for incontinency, ſolicitation of chaſtity, working on a Holiday, or any inferiour offence puniſhable by the Eccleſiaſticall Law, and yet the ſentence of the Commiſſioners in ſuch caſes ſhould be both fatall and finall, and uncontroulable by any ordinary means, either by Appeal, Error, Moderata miſericordia, or otherwiſe. Thirdly, that this violent conſtruction, under myſticall and cloudy words, ſhould extend to fine and impriſonment, &c. all perſons, as well Lay men of what eſtate, degree, or ſex ſoever, in caſes Eccleſiaſticall (where they were not to be fined and impriſoned before) as to Eccleſiaſticall perſons, who were the proper objects of this Act. And then by the Conſtruction that hath been made of the other ſide in caſes where an executor detaineth a Legacy, or a Pariſhioner payeth not his tythes, or the like concerning Meum and Tuum, the Queen, &c. might have inflicted (as hath been ſaid) what puniſhment ſhe would, and the High Commiſſioners fine and impriſonment (as it ſtandeth at this day) without limitation of time, be it never ſo great, or time of impriſonment, be it never ſo long, and without controlment by any ordinary remedy, be the ſentence never ſo unjuſt or erroneous; then which nothing could be more abſurd and inconvenient. Talis interpretatio in ambiguis ſemper fienda eſt, ut evitetur inconveniens & abſurdum. But this conſtruction ſhould not be in ambiguis, but directly againſt the words and meaning of this Act. And ſeeing it hath been granted that the Papall authority

Nota.

rity or any other having Eccleſiaſticall jurisdiction could not fine and impriſon before this Act of 1 Eliz. and that it is expreſſely ſaid in the preamble of this Act, that where in the reign of King H. 8. divers good laws were made as well for the extinguiſhment of forein authority, as for reſtoring to the Crown the ancient jurisdictions, &c. by reaſon whereof the ſubjects were kept in order, and diſburdened of great and intolerable charges and exactions (which good laws being repealed by Queen Mary the ſaid Act doth revive and reſtore) It followeth a concluſion, and by the Letter of this Act, that it was never the meaning of the makers thereof to extend the ſaid clauſe to fine and impriſon the ſubject for Eccleſiaſticall cauſes, and to make him ſubject to greater confiſcations, forfeitures, and puniſhments, where his body before this Act was not ſubject to impriſonment but upon the Kings Writ De excom' capiendo, nor his body, lands, and goods, to fines, or other penalties, or puniſhments, by them to be impoſed, &c. for this were not by this Act of reſtitution to eaſe them of former intolerable charges (as the ſtatute ſpeaketh) but by this Act to make them ſubject to greater and more heavy pains, puniſhments, and charges, then ever they were before. And the ſtatute of 27 H. 8. cap. 15. ſaith, that the Canons, &c. were overmuch onerous to his Highneſſe ſubjects, but they were never ſo onerous as this Act ſhould be. But Uno abſurdo dato infinita ſequuntur. We muſt therefore retire our ſelves to the text of the Act of 1 Eliz. the only ground of this queſtion, and thereupon the concluſion is, that no Letters Patents can by vertue of this Act of 1 Eliz. give any power to the Commiſſioners to impriſon, except it be in certain particular caſes, which now fall into conſideration. For example. The ſtatute of 1 H. 7. cap. 4. doth give power to Biſhops, &c. to commit Prieſts convicted of any incontinency to priſon, and that no Biſhop, &c. ſhall be chargeable therefore in an Action of falſe impriſonment. Now ſeeing that ſuch jurisdiction Eccleſiaſticall (that is, to hear, determine, and puniſh, &c.) as by any Spirituall or Eccleſiaſticall power or authority before the ſaid Act of 1 Eliz. had been, or might lawfully have been exerciſed or uſed for the viſitation of the Eccleſiaſticall ſtate and perſons, and for reformation and correction of the ſame, and of all manner of Errors, Hereſies, Schiſmes, &c. and that every Biſhop, &c. might puniſh ſuch offenders by impriſonment according to the ſaid Act, that ſuch power (and the like in any other caſe by Act of Parliament if any be) is united to the Crown and may be committed over to the High Commiſſioners as before the ſaid Act by any Spirituall or Eccleſiaſticall power had been or lawfully might be uſed, which be the words of the Act it ſelf.

1 H. 7. cap. 4.

Vid. ſtat. of 1 H. 4. ca. 13. & 1 Eliz. ca. 1. and obſerve them well.

But theſe generall words, *viz.* Which have been or lawfully might be uſed, &c. do not extend to any authority or power given by any Act of Parliament to any Eccleſiaſticall Judge: which Act ſtood repealed and annulled by a former Act of Parliament, and had no eſſence at the time of the making of this Act of 1 Eliz. and that for two reaſons: Firſt, for that this Act of 1 Eliz. doth repeal and revive divers Acts of Parliament, and therefore ſhall not be conſtrued to repeal or revive any other by the ſaid generall words. Secondly, for that generall words ſhall not extend to authorities repealed or annulled by Act of Parliament. And ſo it was adjudged in the Lord Darcies caſe in the Kings Bench Paſch. 38 Eliz. where the caſe was, that the Lord of the Manor of Thorp Kirby was amongſt other franchiſes and immunities diſcharged by the Letters Patents of King E. 4. of Purveyance: which Charter for the point of diſcharge of purveyance was annulled by the ſtatute of 27 H. 8. cap. And after the Manor coming to the hands of King E. 6. he by his Letters Patents granted the ſaid Manor to the Lord Darcie and his heirs: and further granted Tot, talia, eadem, hujuſmodi & conſimilia jura, juriſdictiones, franchefias, privilegia, &c. quot, quanta, qualia, & quæ, &c. prout aliquis dominus manerii habuit, tenuit, ſeu gavius fuit virtute alicujus cartæ, doni, ſeu conceſſionis aut aliquarum literarum patentium per præfatum regem, aut per aliquem progenitorum ſuorum quorumcunq; fact' conceſs' ſeu confirmat', aliquo ſtatuto non obſtante. And it was adjudged as it had been before in the Lord Pagets caſe, Mich. 21 & 22 Eliz. in Scaccario: that albeit ſuch

Paſch. 38 Eliz. *coram Rege* the Lord *Darcies* caſe.

Mich. 21 & 22 El. *in Saccario*, the Lord *Paget* caſe.

ſuch a generall grant had been enacted and confirmed by Act of Parliament, yet had not thoſe generall words extended to revive any authority, franchiſe, priviledge, &c. once granted, and which was after, and before the grant repealed or reſumed by Act of Parliament, unleſſe there had been ſpeciall words to revive the ſame, but ſhould extend to other authorities, franchiſes, and priviledges which ſtood not then repealed.

1 H.7.12.13. And there is a far ſtronger caſe reported in 1 H. 7. fo. 12, & 13. By authority of Parliament all prehemineneces, prerogatives, franchiſes, and liberties were given to King H. 7. in taile generally without limitation or ſaving. And the queſtion was, whether the franchiſes and liberties of Lords and other inferiour ſubjects were given: and it was reſolved by all the Judges that they were not, for that the Act was to be intended to do no inferiour ſubject wrong, but the generall words were to be intended of ſuch as might be intailed without prejudice of the ſubject; which is a ſtronger caſe then this, for beſides the prejudice of the inferiour Ordinary for his jurisdiction, and for the ſubject for taking away his appeal, and drawing him from remote parts to his intolerable charge, where he might receive juſtice at home, the clauſe preceding of uniting, and latter particular words do limit and expound the generality of the former words.

Now that divers and many other Acts of Parliament, which are generall in words, have upon conſideration of the miſchief, and all the parts of the Act (for the avoiding of the inconvenience and abſurdity that might follow) received a particular interpretation, it appeareth in our Books in caſes of far leſſe inconvenience and abſurdity.

Pl.Com.fo.369. Stowels caſe. Pl.Com. in Stowels caſe fo. 369. the Preamble is to be conſidered, for it is the key to open the meaning of the makers of the Act, and miſchiefs which they intend to remedy. The Judges of the Law have ever in ſuch ſort peruſed the intents of the meaning of the makers of Acts of Parliament, as they have expounded Acts generall in words to be particular, where the intent hath been particular (which are the words of the Book:) And therefore upon that rule it is there adjudged, that where the ſtatute of 7 E. 6. is generall; If any Receiver or miniſter accountant, &c. receive of any perſon any ſumme of money for payment of any fees, &c. ſhall forfeit 6 s. 8 d. for every penny; that this do not extend according to the generality of the words to the Receiver of common perſons, becauſe theſe words ſubſequent be added (otherwiſe then he lawfully may by former laws and ſtatutes.) Now the Judges reſtrained the generality to a particular, to the Kings Receiver only: for that no law or ſtatute was formerly made concerning common perſons Receivers, &c. But in the caſe in queſtion, as well the precedent clauſe of reſtitution, as the ſubſequent clauſe expreſſing offences in particular, and the words in the ſame generall ſentence, *viz.* under your Highneſſe, &c. and principally the cauſe of the making of this Act do qualifie the generality of the words. And yet notwithſtanding it was reſolved by all the Court in the ſaid caſe of Stradling.fo.203.a. that the Receiver of common perſons were within the words of the ſaid ſtatute. But there it is ſaid, that if a man conſider in what point the miſchief was before the ſtatute, and what thing the Parliament meant to redreſſe by this, he ſhall perceive that the intent of the makers of the Act was to puniſh only the Miniſters of the King. And a little after the Judges ſay that the ſtile of that Act is. An Act for the true anſwer of the Kings Revenues. And by this alſo the intent of the makers of the Act is to be collected, and theſe be the words of the book, which is a far ſtronger caſe then the caſe in queſtion.

4 E.4.4 & 12. 4 E.4.fo.4. & 12. Every ſtatute ought to be expounded according to the intent of them that made it, where the words thereof are doubtfull & uncertain, and according to the rehearſall of the ſtatute; and there a generall ſtatute is conſtrued particularly upon conſideration had of the cauſe of making of the Act, and of the rehearſall of all the parts of the Act. To conclude this point with a generall rule allowed by all laws in conſtruction of ſtatutes. Quamvis lex generaliter loquitur, reſtringenda tamen eſt, ut ceſſante ratione & ipſa ceſſet; cum enim ratio ſit anima vigorq; ipſius legis, non videtur legiſlator id ſenſiſſe, quod ratione careat, etiamſi

etiamſi verborum generalitas prima facie aliter ſuadeat. Seeing then ſo many inconveniencies againſt reaſon, and the meaning of the makers of the Act ſhould follow, it is evident that the generality of the ſaid words in the clauſe of Aſſignation ſhall (as they ought) be limited by the clauſe of Reſtitution, as hath bin ſaid. And it agreeth not well with the ſtile of the High Commiſſion to deale in pety and inferiour cauſes. And for the recitall of a Branch of this Act in the ſtatute of 8 Eliz. cap. 1. It referreth to the Act of primo it ſelfe, and is only in the Preamble, and therefore doth neither increaſe nor diminiſh the ſame. But albeit they have conuſance and juriſdiction of enormous and heinous cauſes, according to the originall inſtitution, yet cannot they puniſh the offender in the fame by fine or impriſonment, unleſſe the ſame were puniſhable by fine or impriſonment before the making of the ſaid Act of 1 Eliz. by ſome Act of Parliament unrepealed at the making of this Act.

But it is ſaid (enormous) is uncertain; Surely in an Act whereof many of the makers are Lay and unlearned men, it hath been expounded by law to be equipollent to heinous, horrible and exorbitant. And this appeareth by the Statute of 2 E. 3. cap. 2. Commiſſion of Oier and Terminer, &c. ſhall not go out, but where the treſpaſſe is horrible. Now if ſuch Commiſſion be granted for a ſmall cauſe, a revocation thereof, which is a flat prohibition, doth lye, as it appeareth in the Regiſter 125, and the words thereof be, Quia non enormis læſio. Which word (enormis) in that Writ doth expreſſe this word [horrible] in the ſaid Act, and there is as great uncertainty in that caſe upon this word [enormis] to prohibit the Commiſſioners of Oier and Terminer, as in the caſe now in queſtion concerning the Eccleſiaſticall Commiſſion, and eſpecially in this Act of primo it ought to be taken to be horrible, exorbitant, & extra omnem normam; for that the High Commiſſioners do claim to ſend for all degrees of men and women, and out of all the parts of England or Wales, be the place never ſo remote, &c. But the Commiſſion of Oier and Terminer cannot be taken but in the proper County where the fact was done. And yet it is evident by all which hath been ſaid, that his Majeſty hath, and Queen Elizabeth before him had, as great and ample ſupremacy and juriſdiction Eccleſiaſticall as ever King of England had before them, and that had juſtly and rightly pertained to them by divers other Acts, and by the ancient laws of England, if the ſaid clauſe of Anneration in the ſaid ſtatute of 1 Eliz. had never been inſerted. 2 E. 3. cap. 2.

This Act of 1 Eliz. prohibiteth againſt them that ſhould by printing, writing, or words, maintain or defend the juriſdiction ſpirituall of any forein Prince, Prelat, &c. within this Realm; that every ſuch perſon being lawfully convicted by the courſe of the Common law, ſhall for the firſt offence forfeit and loſe all his and their goods and chattels. And if any perſon ſo convicted ſhall not be worth of his proper goods and chattels to the value of 20. li. then ſuch perſon ſo convicted ſhall ſuffer impriſonment one whole year, &c. Now albeit upon the maintenance or defence of the Popes Supremacy depend ſo many miſchiefs as the principall ſcope of this and other Acts was utterly to abolish and extinguiſh the ſame, and that it is High Treaſon in the ſecond degree: yet ſee how temperately this Act doth puniſh that moſt dangerous and damnable error. And albeit the proceedings at the Common law are reverſible by Writ of error; yet the ſtatute addeth two cautions, that no perſons ſhould be impeached for any of the offences by preaching, teaching, or words, unleſſe they be lawfully indicted within the ſpace of one half year. And if any perſon be impriſoned, and be not indicted within half a year, then the perſon ſo impriſoned, ſhall be ſet at liberty. Now if the party offending in ſo high and ſupream an offence, as the maintaining of the Popes Supremacy, ſhall be puniſhed for the firſt offence ſo temperately, and with ſuch caution and limitation, it was never the meaning of the ſtatute to charge the ſubject with fine or impriſonment by the diſcretion of the Commiſſioners without limitation either of time of impriſonment, or quantity of fine, for leſſer crimes and offences, whereunto he was not ſubject before the making of this Act.

But

But if the meaning of the Makers of the Act had been to have inflicted newly upon the ſubject not only fine and impriſonment, but by the ſame reaſon confiſcation of goods, forfeiture of lands, nay any corporall puniſhment, &c. they would not under ſuch cloudy and dark words have inflicted thoſe greater puniſhments for leſſer offences without ſome limitation, as they did for the greateſt offences of all, and not to have left leſſer offences to the abſolute and uncontrollable power of the High Commiſſioners by any ordinary mean.

If the High Commiſſioners might have fined and impriſoned men for offences againſt the Eccleſiaſticall laws, to what end were the ſtatutes of 23 Eliz. 28 Eliz. &c. made againſt men for abſtaining and not comming to Divine ſervice, &c. and why did thoſe Acts inflict a penalty, of 20 l. the month, and impriſonment, &c. with a diſcharge of the penalty, &c. upon ſubmiſſion, if the High Commiſſioners might have fined and impriſoned them abſolutely without certainty of any ſum, or limitation of any time of impriſonment, and without any ability or power by ſubmiſſion or conformity to eaſe themſelves? And yet abſence from Divine ſervice is a meer Eccleſiaſticall cauſe; and the like may be ſaid of divers other Acts of Parliament of like nature.

Thus hath this ſtatute been plainly expounded by the parts of the ſame, according to the naturall and genuine ſenſe, and the originall inſtitution and juriſdiction of the High Commiſſion by force of the ſaid Act truly expreſſed.

And concerning the form of Commiſſions and practice by the High Commiſſioners in the reign of the late Queen Eliz. by fining and impriſoning for adultery, fornication, ſimony, uſury, defamation, &c. it may be that ſuch fines have been impoſed, but, as we be informed, not one of them levied in all the reign of Queen Eliz. by any judiciall proceſſe out of the Exchequer in the time of Sir Edward Sanders, who was Chief Baron at the time of the making of the ſaid Act, Sir Robert Bell, Sir John Jefferies, Sir Roger Manwood, or Sir William Peryam Chief Barons of the Exchequer: So as in all the late Queens time (as we be informed) no fine was levied, or any ſubject in his body, lands or goods charged therewith, which would not have been by ſo many worthy men aſſiſted with divers other grave and learned Barons pretermitted to be either levied or written for by the Court, if by law the ſame ought to have been levied. And the ſubjects (for the greateſt part) being wrongfully fined, impriſoned, and injured by colour of the High Commiſſion, asked no adviſe to take any ordinary remedy, for that the High Commiſſioners (knowing the weakneſſe of their Authority) kept the Commiſſion ſecret, and contrary to law and juſtice ſuffered not the ſame to be inrolled in the Chancery, ſo as the ſubject lived under an unknown Commiſſion and Authority (& Miſera eſt ſervitus ubi jus eſt vagum aut incognitum) untill of late the Lord Chancelor (as hath been ſaid) according to law cauſed the ſame to be inrolled; and very few upon ſerious conſideration tooke an exact ſurvey of all the parts of the Act of 1 Eliz. And this is the cauſe why their Preſidents (if they affirm truly) may be many, eſpecially againſt the weaker ſort: and the judgments and Preſidents in the Kings Courts concerning theſe matters, few, as they give out, charging the Judges of the Realm with Innovation. And yet ſome being intolerably grieved, ſometime to their utter undoing, by the High Commiſſioners, upon complaint made to the higheſt Courts of ordinary Juſtice in this Realm, the Judges upon conſideration had of the ſtatute of 1 Eliz. which is the foundation whereupon the High Commiſſion is grounded, have, as often as complaint hath been made, relieved them according to law and juſtice.

In Atmeres caſe the whole Court of Exchequer in the late Queens reign, judicially reſolved, being the Kings proper Court, that the High Commiſſioners could not puniſh any man for working on a Holy day, albeit it be a matter of Eccleſiaſticall conuſance, but ought by the true meaning of the ſtatute of 1 Eliz. to be puniſhed by the Dioceſan, which is to be ſeen of Record.

Taylors caſe. Mich. 44 & 45 El. Rot. 1255. Simile 43 & 44 El. Rot. 503.

Alſo in the reign of Queen Eliz. William Taylor Clerk, Parſon of Springfeld in Eſſex did implead William Maſſy Gent. before the High Commiſſioners for giving unreverent ſpeeches to the Miniſter, &c. for carrying his Corn on Holy

days,

dayes, for not ſuffering the Parſon and Parſhioners to come thorow his yard in Rogation week in the perambulation, and not giving them a repaſt as uſually he had done, that he whiſtled and knocked on the Parſons Barn doore, and ſaid he did it to make him muſique for his daughters marriage, and many other Articles of like nature; and it was ruled upon open motion, and often debating by the whole Court of Common pleas, that the High Commiſſioners could not deal with ſuch inferiour offences, but are to be left to the proper Diocesan, who is to reform the ſame with leſſe charge and travell in the proper Dioceſſe. And thereupon a Prohibition was granted by the Court of Common pleas, whereby it appeareth, that they cannot hold plea of all Eccleſiaſticall cauſes.

The like Prohibition was granted out of the Common pleas in the ſaid late Queens reign, between Robert Pool Clerk Parſon of Winchelſey, and Thomas Gray, to the High Commiſſioners, for that they held plea for aſſaulting and laying violent hands on the ſaid Robert Pool being a Parſon, upon open motion and argument by the whole Court. Grayes caſe, Vid. infra pa. 334. Trin. 44 El. Rot. 1233. in Com. Banco.

Hil. 3 Jac. Regis, in Communi Banco, between Lyn and Wats for promiſe of a peerly ſum in marriage. Simile 4 Eliz. Rot. 422. in Com. Banco.

* Trin. 3 Jac. in Communi Banco, between Jeneway Parſon of T. in Eſſex, and Porter for defamation and laying violent hands on a Clerk. The like in the Kings Bench. Patch. 19 Eliz. Rot. 00. & Paſch. 41 Eliz. ibidem Rot. 235. * Tr 3 Jac. in Com' Banco. Porters caſe.

[a] And concerning fine and impriſonment. Anno 9 Reginæ Eliz. which was about eight years after the ſtatute of 1 Eliz. Sir James Dier and divers other of the Judges were then living, that were preſent at the making of the ſaid ſtatute, Thomas Lee an Atturny of the Common pleas, being convented before the High Commiſſioners for hearing of a paſſe, was by them in their proceedings committed to priſon, which matter being returned by Habeas Corpus, he was upon great conſideration had, by the Lord Dier and the whole Court of Common pleas diſcharged of his impriſonment, for that the High Commiſſion had no power to impriſon him in that caſe. [a] Mic. 9 & 10 El. Rot. 1556. Lees caſe.

The like reſolution was in 18 Eliz. by the Lord Dier, and the whole Court of Common pleas, in the caſe of one Hinde, who being convented before the High Commiſſioners for Uſury, to anſwer, &c. was thereupon impriſoned by them, & by Habeas Corpus delivered, for that the impriſonment in that caſe was unlawfull. 18 El. Dier fo. Hindes caſe.

By warrant from the High Commiſſioners in the reign of Queen Eliz. directed to Richard Butler Conſtable of Aldrington in the County of Northampton, for attaching and arreſting of the body of John Simpſon of Aldrington aforeſaid, and bringing his body before the High Commiſſioners in caſe of Adultery with the wife of Edward Fuſte, the Conſtable being aſſiſted with one William Johnſon ſervant of the ſaid Edward Fuſte, the ſaid Conſtable with Johnſon came to a Widows houſe in Aldrington where the ſaid Simpſon was, and the doors being open would have at eight of the clock at night arreſted Simpſon by the ſaid Warrant, which the ſaid Conſtable read unto him, notwithſtanding the ſaid Simpſon reſiſted them, and in his own defence (and ſhewed how) ſlew the ſaid Johnſon that came in aid of the ſaid Conſtable. Now the queſtion before the Juſtices of Aſſiſe of that County, (Simpſon being in the Gaol therein) what his offence was? wherein the doubt reſted in this, whether the Conſtable might lawfully attach and arreſt the body of the ſaid Simpſon, (which in law is an impriſonment) for if he had lawfull authority to arreſt him, then the offence was wilfull murder in killing one that came in aid of a Miniſter of Juſtice in execution of his office: but if the Conſtable had no lawfull authority to arreſt his body by force of the High Commiſſioners Warrant, then was it but ſe defendendo, a ſmall offence, which doubt wholly conſiſted upon conſtruction of the ſtatute of 1 Eliz. for by the Letters Patents expreſſe authority is given to the High Commiſſioners to ſend for the body of any offendor, &c. by Purſevant, or by Warrant. The matter being weighty, and the ſaid Simpſon being by the Coroners inqueſt indicted of wilfull murder, ſuppoſing the ſaid Warrant to be lawful, the Juſtices of Aſſiſe thought not good to proceed againſt him at thoſe Aſſiſes, but deferred it till the next Aſſiſes: At what time, after this long time of deliberation, Simpſons caſe before the Judges of Aſſiſe in Northamptonſhire, 42 Eliz.

tion, and upon conference, it was reſolved, that the ſtatute of 1 Eliz. gave no power to the High Commiſſioners to make any Warrant to arreſt the body of Simpſon in that caſe, but ought to have proceeded by Citation: and therefore that Simpſon killing the ſaid Johnſon had committed no murder; and ſo the Jury upon his arraignment found him not guilty of murder according to the direction of the Court, as it appeareth by the Record it ſelf. And it was reſolved in Grayes caſe aforeſaid, that for the battery of a Miniſter they could not fine and impriſon.

Supra pag. 133. Grayes caſe.

Williã Thicknes caſe, in Communi Banco.

William Thicknes having the priviledge of the Court of Common pleas, had a Habeas Corpus to the Sheriff of London for his body, with the cauſe, he being under their cuſtody, who returned that the High Commiſſioners had committed him to their cuſtody by force of his Majeſties Commiſſion for cauſes Eccleſiaſticall, and of the ſtatute in that caſe provided, for that he was convicted before them of Adultery, and other contempts and enormities appertaining to Eccleſiaſticall conuſance. And the caſe being debated in open Court, he was diſcharged of his impriſonment, for that by the ſtatute of 1 El. they could not impriſon him.

25 H. 8. cap. 19.

By the ſtatute of 25 H. 8. cap. 19. it is enacted, that for lack of Juſtice at or within any of the Courts of the Archbiſhops of this Realm, or in any of the Kings Dominions, it ſhall be lawfull to the parties grieved to appeale to the Kings Court of Chancery, and that upon every ſuch appeal Commiſſions ſhall be directed under the Great Seal to ſuch perſons as ſhall be named by the Kings Highneſſe, &c. which Commiſſioners ſo by the Kings Highneſſe, &c. to be named or appointed, ſhall have full power and authority to heare and finally determine ſuch Appeal, and that ſuch judgement and ſentence as the ſaid Commiſſioners ſhall make and decree in and upon ſuch Appeal, ſhall be good, effectuall, and definitive. Which words, albeit they be more generall, & with leſſe reference to the precedent matter, then the Act of 1 El. yet have ſuch Commiſſioners no colour to fine or impriſon any: but where the words be [and ſuch judgement and ſentence as the ſaid Commiſſioners ſhall make and decree] theſe generall words have theſe words implicite annexed to them [according to the Eccleſiaſticall laws] ſhall be good, effectuall, &c. So in the ſtatute of 1 Eliz. ſuch words are implicite to be added to the ſaid clauſe, viz. That the High Commiſſioners ſhall execute the premiſſes according to the ſaid Letters Patents by the rule of the Eccleſiaſticall law or Authority of Parliament. And ſince the High Commiſſion was inrolled and made publique, many prohibitions have been granted according to Law and Juſtice upon complaint made by the parties grieved.

And in the reign of the ſaid late Queen Eliz. it was reſolved, that the High Commiſſion ſhould be limited to certain particular enormious and exorbitant cauſes, which if it were purſued would breed great quiet and repoſe within the Realm.

See Hil. 17 El. Rot. 1402. Inter Henr. Evans Clericum queren' & Thomam Jefferies Clericum Defendant.

In the reign of the ſaid late Queen a Prohibition was granted by Sir James Dier Chief Juſtice, and the whole Court of Common pleas, 10 Februarii Anno 21 Eliz. to the High Commiſſioners for that they did hold plea de jure Advocationis.

[a] And in my Lord Andersons time in the reign of Queen Elizabeth the Court of Common pleas granted divers Prohibitions, as it appeareth before, and two of ſpeciall note [b] between Baker and Broughton, and another between Blackheath and the Biſhop of Glouceſter. And in my Lord Gaudies time who ſucceeded the Lord Anderſon and injoyed his place but a ſhort time, yet in that time the Court of Common pleas granted Prohibitions alſo to the High Commiſſioners.

[a] Hil. 3 Jac. [b] Mich. 41 & 42 El. Rot. 2919. and an Attachment thereupon. Mich. 42 & 43 El. Rot. 3332.

Many other Prohibitions have been granted to the High Commiſſioners out of the Court of Common pleas of after times.

In the Kings Bench there are alſo many Prohibitions granted to the High Commiſſioners in the times of the Lord Wray, Lord Popham, Lord Fleming, &c. which are to the ſame effect as thoſe which have been cited be.

And we will conclude with the confeſſion of the Lord Archbiſhop Bancroft

croft himſelf in his 22 Article, his own words being: Of latter dayes, whereas certain leud perſons, (two for examples ſake) one for notorious adultery and other untolerable contempts, and another for abuſing of a Biſhop of this Kingdome by threatning ſpeeches and ſundry railing tearmes, no way to be endured, were thereupon fined and impriſoned by the High Commiſſioners till they ſhould enter into bonds to perform further orders of the ſaid Court, the one was delivered by *Habeas Corpus* out of the Kings Bench, and the other by a like writ out of the Common pleas, and ſundry other Prohibitions have been likewiſe awarded to his Majeſties ſaid Commiſſioners upon theſe ſuggeſtions, that they had no authority to fine or impriſon any man, &c.

See the Articles and anſwers in the 2 part of the Inſtitutes, in the Expoſition of *Articuli Cleri, &c.*

By this Article it appeareth, that before the time of the Chief Juſtice of the Court of Common pleas that now is, and before divers of the Judges, that now be, were called to be Judges by the judgement and reſolution both of the Court of Kings Bench and Common pleas by Habeas Corpus, the parties that were fined and impriſoned by the High Commiſſioners in caſe of Adultery and ſcandall of a Biſhop, &c. were by the law diſcharged, for that the fining and impriſonment of them was unlawfull.

And theſe were the reſolutions of the whole Court of Common pleas Paſch. 9 Jacobi Regis, upon often conference and mature deliberation, and accordingly they proceeded.

¶ The Prerogative Court of the Archbiſhop of Canterbury.

Curia Prerogativa Archiepiſcopi Cantuarienſis.

This is the Court wherein all Teſtaments be proved, and all Adminiſtrations granted, where the party dying within his Province hath bona notabilia, in ſome other Diocеſſe then where he dieth, which regularly is to be to the value of 5 l. but in the Diocеſſe of London it is 10 l. by compoſition.

The Biſhops, Lords and Commons aſſented in full Parliament, that the King, his heirs and ſucceſſors might lawfully make their Teſtaments, and that execution ſhall be done of the ſame, whereof ſome doubt was made before. See Rot. Par. 1 H. 5. nu. 13. the Teſtament of King H. 4. and his Executors refuſed, the Archbiſhop of Canterbury was to grant Adminiſtration with the Teſtament annexed to the ſame. See 1 H. 6. nu. 18. the laſt Will and Executors of H. 5. 10 H. 6. nu. 27.

Rot. Par. 16 R. 2. nu. 10. not in print.

When the King is made an Executor of the laſt Will and Teſtament of any other, the King doth appoint certain perſons to take the execution of the Will upon them (againſt whom ſuch as have cauſe of ſuit may bring their Action) and appointeth others to take the Account. See Rot. Par. 15 H. 6. Katherine Queen Dowager of England, mother of H. 6. made her laſt Will and Teſtament, and thereof conſtituted King H. 6. her ſole Executor. And thereupon the King appointed Robert Rolleſton, Clerk, Keeper of the great Wardrobe, John Merſton, and Richard Alcred Eſquires, to execute the ſaid Will by the overſight of the Cardinall the Duke of Gloc', and the Biſhop of Linc', or of two of them to whom they ſhould account.

Rot. Par. 15 H. 6. nu. 32. Obiit 2 Junii 1436. apud Bermondſey.

The Probate of every Biſhops Teſtament or granting of Adminiſtration of his goods, although he hath not goods but within his own jurisdiction, doth belong to the Archbiſhop.

The like Court the Archbiſhop of York hath.

From this Court the Appeal is to the King in Chancery. Now touching the jurisdiction of this Court, and the Conſiſtories of Biſhops, &c. ſuch points as have been judicially reſolved, are neceſſary to be remembred, both for the ſafety of the Judge, and the benefit of the party intereſted.

If a man die intestate having bona notabilia in divers Dioceſſes, the Judge of this Court hath uſed to aſſeſſe a convenient ſum to be imployed in pios uſus, but with theſe limitations following: 1. It muſt be after Adminiſtration granted, and the Inventory made and returned, to the end the Eſtate of the Inteſtate may be known. 2. The Adminiſtrator before any aſſeſment muſt be called to it, to the intent the Judge may be informed of the true ſtate of the Inteſtate, and of his children and kinred, for whoſe ſuccour and relief there is great piety. The 3. the aſſeſſement muſt be in particular, how much, to whom, and to what uſe. 4. There muſt a publique Act be made of it before any payment be made. 5. Payment muſt be made according to the Act. Laſtly, the Judge ought not directly or indirectly to take any thing thereof to his own uſe, nor for the Aſſeſſement thereof or entring the publique Act, and if he doth, it is Extortion.

Mich. 20 Jac. in Camera ſtellata.

And Termino Mich. 20 Jacobi Regis, Sir John Bennet Judge of this Court, for not obſerving of theſe rules was ſentenced in the Star-chamber for Extortion, and fined at twenty thouſand pounds, impriſoned, and diſabled ever after to bear an office, as by the ſentence appeareth. And the like orders and rules muſt be obſerved in all reſpects (ſaving the two former) in commutation of penance, which two former doe not concern this matter. And theſe rules as well concerning aſſeſſements in pios uſus, upon granting of Adminiſtrations, as for commutation of penance, may ſerve for the direction of all the Ordinaries and Judges in Eccleſiaſticall Courts in England.

21 H. 8. cap. 5. Mich. 6 Jac. Reg. Rot. 1301. in Communi Banco.

There was an Act made Anno 21 H. 8. concerning fees for probate of Laſt Wills and Teſtaments, and granting of Adminiſtrations. In the caſe of James Rowſe Commiſſary of the Archdeacon of Huntingdon, in an Information againſt him by Edmond Neale, for Extortion upon the ſaid ſtatute of 21 H. 8. whereunto he pleaded not guilty, and was found guilty, the point in queſtion upon the Information was, if the Probate be not written upon the Teſtament it ſelfe, but upon the Tranſcript ingroſſed, whether the taking of a fee by the Defendant for the ingroſſing were within the ſaid ſtatute? And it was upon debate in open Court reſolved by the Chief Juſtice, and the reſt of the Juſtices, Walmſly, Warburton, Foſter and Daniel, that ſuch a fee taken for the ingroſſing was within the ſtatute, for that the Act is in the Negative. And if the Executor requeſt any to ingroſſe the Teſtament, he muſt agree with him, that he ſo requeſt (or * bring one ready ingroſſed with him as he did in the caſe in queſtion, which is a ſafe and ready way) but the Ordinary or Commiſſary ought not to exact a fee for it of the party as a fee due to him, for divers cauſes. Firſt, for that the words are expreſſe for the Probation, &c. or for Regiſtring, Sealing, writing, praiſing, making of Inventories, &c. which word (writing) extends to this caſe. Secondly, the words be, or any thing concerning the ſame Probate, and when the Seal and Probate is put to the Tranſcript this concerns the Probate, for the Probate is not put to any other writing. Thirdly, if ſuch a conſtruction ſhould be made, that this caſe is out of the ſtatute, this beneficiall law ſhould be illuſory and vain; for if the Ordinary or his Commiſſary might take what he would for the ingroſſing by his Clerks as a fee due to him, the Act ſhould be of none effect; and the manner of the preciſe penning of the Act and the certainty of the fees, and not above, ſhould be all in vain. And the Ordinary, if he will, may annex the Probate to the Teſtament it ſelf, as ſeeing he can have no other fee then is in the ſtatute, it may be hereafter he will doe: but for the miſreciting of the Act of 21 H. 8. in the Information, Curia adviſare vult; and this reſolution extending to all Courts of Eccleſiaſticall juriſdiction that have Probate of Teſtaments, we thought it neceſſary to make a memoriall of it.

See the 3 part of the Inſt. Cap. Extortion.

See the Act.

* Note this.

See the words of the Act at large.

¶ *The*

¶ *The Court of the Arches of the Archbiſhop of Canterbury.*

This Court is called Curia de Arcubus, and hath been anciently holden in Bow Church of London. For I read of it in a Record of a Prohibition Termino Hil. coram Rege Anno 7 E. 1. Rot. 8. in Curia Chriſtianitatis coram Decano de Arcubus London, Of Bow Church in London, where the Court hath continually been kept, which and 12 other Pariſhes in London, whereof Bow is the chief, are within the peculiar juriſdiction in ſpirituall cauſes of the Archbiſhop of Canterbury, and exempt from the Biſhop of London.

Hil. 7 E. 1. coram Rege Rot. 8. Paſch. 12 E. 1. in Banco. Eſſex. Gulielmus de Mortuo mari Clericus &c.

The Judge of this Court is called the Dean of the Arches, unto whoſe officialty in Spirituall cauſes to the Archbiſhop of Canterbury is annexed the peculiar juriſdiction of theſe 13 Pariſhes. He hath ordinary juriſdiction in Spirituall cauſes of the firſt inſtance, & by Appeal through the whole Province of Canterbury, as it appeareth by the ſtatute of 24 H. 8. cap. 12. His power to call any perſon for any cauſe out of any part of his Province in the Dioceſſe of any other, unleſſe it be upon appeal, is reſtrained by the ſtatute of 21 H. 8. cap. 9. This Court in the ſtatute of 25 H. 8. cap. 19. is called the Court of the Arches or Audience of the Archbiſhop of Canterbury: and from this Court of the Arches the Appeal is to the King in Chancery by the ſaid Act of 25 H. 8.

See Dier 7 Eliz. 241.

24 H. 8. cap. 12.
1 Eliz. cap. 1.
21 H. 8. cap. 9.
25 H. 8. cap. 19.

¶ The Court of Audience. *Curia Audientiæ Cantuarienſis.*

This Court is kept by the Archbiſhop in his Palace, and medleth not with any matter between party and party of contentious juriſdiction, but dealeth with matters pro forma, as confirmations of Biſhops elections, conſecrations, and the like, and with matters of voluntary juriſdiction, as the granting of the gardianſhip of the ſpiritualties ſede vacante of Biſhops, admiſſion and inſtitution to Benefices, diſpenſing with banes of matrimony, and ſuch like.

¶ *The Court of the Faculties.*

This is alſo a Court, although it holdeth no plea of controverſie (like the Court of Audience next before.) It belongeth to the Archbiſhop, and his Officer is called Magiſter ad Facultates. And his power is to grant Diſpenſations, as to marry, to eat fleſh on dayes prohibited, (and ſo may every Dioceſan) the Sonne to ſucceed his Father in his Benefice, one to have two or more Benefices incompatible, &c. It is called Faculties in the ſtatute of 28 H. 8. which in one ſenſe ſignifieth a diſpenſation. So as facultates, (in this ſenſe) diſpenſationes & indulta are ſynonyma.

Vi. 28 H. 8. ca. 16. 21 H. 8. cap. 13. 5 Eliz. cap. 16.

This authority was raiſed and given to the Archbiſhop of Canterbury by the ſtatute of 25 H. 8. cap. 21. whereby authority is given to the ſaid Archbiſhop and his ſucceſſors to grant Diſpenſations, faculties, &c. by himſelf or his ſufficient and ſubſtantiall * Commiſſary or Deputy for any ſuch matter, whereof heretofore ſuch diſpenſations, faculties, &c. then had been accuſtomed to be had at the See of Rome, or by authority thereof. [a] This Branch of this Act you ſhall find pleaded Lib. plac. Co. pag. 512, 513.

* Commonly called the Maſter of the Faculties.

[a] Trin. 44. Eliz. in Com. Banco. Rot. 1525. lib. 4. f. 117. Lib. pl. Co. pag. 512, 513.

[b] Concerning the power of the Archbiſhop to grant Diſpenſations to any to eat fleſh on Fridayes, Saturdayes, Embring dayes, Vigils, and Lent, the ſame is limited by the ſtatute of 5 Eliz. cap. 5. And the penalty of 5 Eliz. in that caſe is diminiſhed and made leſſe by 35 Eliz. cap. 7. Note the ſtatute of 5 Eliz. concerning eating of fleſh on Wedneſdayes is repealed by 27 Eliz. ca. 11. which Act of 27 Eliz. is affirmed by the Act of 35 Eliz. and by 21 Jac. cap. 28. and expreſſly by the ſtatute of 3 Caroli cap. 4.

[b] 2 E. 6. cap. 19. 5 E. 6. cap. 3. See the third part of the Inſtit. cap. Dier pag. 200. 5 Eliz. ca. 5. 35 Eliz. cap. 7. 27 Eliz. cap. 11. Lib. pl. Co. 351. 27 Eliz. ca. 11. 3 Caroli ca. 4. Vid. 35 Eliz. c. 7.

¶ *Curia*

ℂ *Curia Peculiarium.* The Court of Peculiars.

The Archbiſhop of Canterbury hath a peculiar juriſdiction in divers pariſhes within the City of London and other Dioceſſes, &c.

¶ *The Conſiſtory Courts of the Archbiſhops and Biſhops.*

Sco Lit. Sect. 133. 136. 648.

The Conſiſtory Court of every Archbiſhop and Biſhop of every Dioces in Eccleſiaſticall cauſes is holden before his Chancelour in his Cathedrall Church, or before his Commiſſary in places of the Dioces far remote and diſtant from the Biſhops Conſiſtory, ſo as the Chancelor cannot call them to the Conſiſtory, without great trauaile and veration: and he is called Commiſſarius foraneus. From theſe the appeal is to the Archbiſhop of either Province reſpectively: when Conſiſtories of Archbiſhops and Biſhops began within this Realme, ſee before in the Chapter of the Tourn of the Sheriffe.

24 H. 4. cap. 12.

Rot. claus. 30 H. 3. m. 4. mandatum eſt Thom. de Stanford, &c. Ro. Pat. 13 E. 1. m. 21. Rex licent. dedit Epiſcop. Bangor, &c.

It appeareth by many Records in the reigns of H. 3. and E. 1. (as taking ſome one or two examples for many) that by the law and cuſtome of England no Biſhop could make his will of his goods or chattels comming of his Biſhoprick, &c. without the Kings licenſe. The Biſhops that they might freely make their Wills, yeelded to give to the King after their deceaſes reſpectively for ever Sire things. 1. * Their beſt Horſe or Palfrey with bridle and ſaddle. 2. A Cloak with a Cape. 3. One Cup with a cover. 4. One Baſon and Ewer. 5. One Ring of gold. 6. His Kennell of Hounds. For theſe a Writ iſſueth out of the Exchequer after the deceaſe of every Biſhop: For example. Rex, &c. Vic' Eborū. Præcipimus tibi, quod non omitt' propter aliquam libertatem, quin etiam ingred' & diſtring' omnes executores teſtamenti & ultimæ voluntatis reverendiſſimi in Chriſto patris Matthæi nuper Archiepiſcopi Eborum defuncti, ac adminiſtratores & occupatores bonorum & catallorum quæ fuer' dicti nuper Archiepiſcopi, necnon hæred' & tenent' terrarum & tenᵗorum quæ nuper ſua fuer' per omnes terras & catalla ſua in balliva tua. Ita quod nec ipſi nec aliquis per ipſos ad ea man' appon' donec al' inde tibi præceperimus. Et quod de exitibus earundem terrarum nobis reſpondend', & quod habeas corpora eorum coram Baronibus de Scaccario noſtro apud Weſtm. die Paſchæ in tres ſeptimanas ad reſpondend' nobis de uno optimo equo ſive palfrido cum cello & fræno. Una chlamyde ſive cloca cū capella. Uno cipho cum coopertorio. Uno pelve cum lavatorio ſive aquar'; & uno annulo aurgo, nec non * muta canum quæ nuper fuer' ejuſdem nuper Archiepiſcopi tempore mortis ſuæ; & quæ ad nos ratione prerogativæ noſtræ ſpectant & pertinent, & de precio ſive valore inde, unde nobis nondum eſt reſponſ. Et habeas ibi tunc nomina executorum & aliorum prædict' & hoc Breve.

* Mutes de Cheins of muit cometh muta, ſignifying a Kennell. Int. com. de Hil. 2 E. 2. In Scaccar. Proces verſ. Epiſc. de Bath & Wels.

The moſt ancient of this kind that we find and remember (but certainly there were ſuch Writs before) is inter Memorand' de Scaccario Anno 2 E. 2. the Biſhop of Bathe and Wells caſe. Tr. 36 E. 3. ibid. Int. com. The Biſhop of Chichesters caſe. Hil. 5 E. 4. ibid. adjudge upon demurrer, that the duty being to the King after the deceaſe of every Biſhop, it extendeth to an Archbiſhop, the Archbiſhop of Yorkes caſe, for every Archbiſhop is a Biſhop. It is ſometimes called naulum or muſtum de Epiſcopis, ſometime monutier, &c. The King by verdict of twelve recovered ten thouſand Marks againſt the Biſhop of Norwich for that he proſecuted againſt the Abbot of S. Edmonds Bury to appear before him againſt the Kings Prohibition, for which it was adjudged that his temporalties ſhould be ſeiſed and his body taken.

Mich. 19 E. coram Rege Rot. 157. Norff. Tr. 21 E. 3. Rot. 170. coram Rege. 21 E. 3. fo. 60.

* Upon conſideration had of the ſtatutes of 3 R. 2. 7 H. 4. 1 H. 5. & Rot. Parl. 6 H. 4. nu. 48. & 4 H. 6. nu. 19. If an Alien or ſtranger born be preſented to a Benefice, the Biſhop ought not to admit him, but may lawfully refuſe him: which we have added, for that the Abridgements of late Impreſſions may deceive you.

3 R. 2. cap. 3. 7 H. 4. cap. 12. 1 H. 5. cap. 7. Rot. Parl. 6 H. 4. nu 48. 4 H. 6. nu. 19.

ℂ *The*

¶ *The Court of the Arch-deacon, or his Commiſſary.*

This Court is to be holden where and in what places the Arch-deacon either by preſcription or compoſition hath juriſdiction in ſpirituall cauſes within his Archdeaconry. And from him the Appeal is to the Dioceſan. He is called Oculus Epiſcopi. 24 H.8.cap.12.

In ſome Acts of Parliament and many Records and Hiſtories you ſhall reade of the Biſhops Pall, Pallium Epiſcopale. It is a Hood of white Wool, to be worn as Doctors Hoods be upon the ſhoulders, with four Croſſes woven into it, &c. the forme and colours thereof you may ſee in the Book De antiquitate Britannicæ Eccleſiæ pag.1. for a Pall is the Arms belonging to the See of Canterbury, and therefore expreſſed there and commonly in other places. 20 H.8.c.20, &c. Vide Caſſaneus 4 part.Catalogi gloriæ mundi fo.103.a. 26 Conſideratio, ubi legas, ſi placet, multa de pallio.

Palla eſt veſtis qua Altare coopericur, *viz.* ut lineus pannus conſecratus qui ſuper Altare ponitur, ſuper quem extenditur Corporale. Vocabular' juris.

The Clergy petitioned in Parliament, that of every Conſultation conditionall, the Ordinary may of himſelf take upon him the true underſtanding thereof, and therein proceed accordingly. Parl.51 E.3. nu.83.

Whereunto the Kings anſwer was, That the King cannot depart with his right, but to yeeld to his ſubjects according to law. *Nota hoc, & ſtude bene.*

¶ *The Court of Delegates, and conſequently of Appeals.*

It is ſo vulgarly called, becauſe theſe Delegates doe ſit by force of the Kings Commiſſion under the Great Seal upon an Appeal to the King in the Court of Chancery in three cauſes. Firſt, when a Sentence is given in any Eccleſiaſticall cauſe by the Archbiſhop or his Officiall. Secondly, when any ſentence is given in any Eccleſiaſticall cauſe in places exempt. Thirdly, when a ſentence is given in the Admirall Court in ſuits civill and marine by the order of the Civill law. And theſe Commiſſioners are called Delegates, becauſe they are delegated by the Kings Commiſſion for theſe purpoſes. 25 H.8.ca.19.

Now becauſe we have generally ſpoken of Appeals in Eccleſiaſticall cauſes, which are grounded upon Acts of Parliament, it ſhall be pertinent to our purpoſe to ſet down the reſolution of the Judges, and of the learned in the Eccleſiaſticall law, which doth ſumme up in what cauſes, from what Courts, and in what time Appeals are to be made, and other neceſſary incidents concerning the ſame, as the Lord Dier under his own hand hath reported, but are left out of the print, and yet worthy to be known and publiſhed, which you ſhall heare in his own words and language.

¶ *Of Appeals.*

First, in cauſes Teſtamentary, Patrimony, and Tithes, from the Archdeacon or his Officiall, if the matter be there commenced, to the Biſhop of the Dioces, and ſom the Biſhop Dioceſan or his Commiſſary in ſuch caſe, or if the matter be there commenced, within fifteen dayes after ſentence given, to the Archbiſhop of the Province, and no further. Appeals. Anno 24 H.8.ca.12.

Item, from the Archdeacon or Commiſſary of the Archbiſhop, if the matter be there commenced within fifteen dayes, &c. to the Audience or Arches of the ſaid Archbiſhop: and from thence within other fifteen dayes, &c. to the Archbiſhop himſelf, and no further. And if the caſe be commenced before the Archbiſhop, then to be there definitively determined without further Appeal. See infra, this is altered by the ſtatute of 25 H.8. in the next pag.

Item, where the matter toucheth the King, the Appeal within fifteen dayes to be

be made to the higher Convocation houſe of that Province, and no further, but finally to be there determined.

25 H.8.cap.19. A generall Prohibition, that no Appeales ſhall be purſued out of the Realm to Rome, or elſwhere.

Item, a generall Clauſe that all manner of Appeales, what matter ſoever they concern, ſhall be made in ſuch manner, forme and condition within the Realme, as it is above ordered by 24 H. 8. in the three Cauſes aforeſaid: And one further degree in Appeals for all manner of Cauſes is given, viz. from the Archbiſhops Court to the King in his Chancery, where a Commiſſion ſhall be awarded for the determination of the ſaid Appeale, and from thence no further.

¶ Vide ſupr. pag. præcedent.

Item, that perſons exempt ſhall likewiſe purſue their Appeal in the Chancery, ut ſupra, and not to the Archbiſhop.

Note, in caſe where a ſentence is given by Commiſſioners delegates by the Prince, as by the late Viſitors, Anno 1 Eliz. the party grieved appealing, ſuch appeale is out of the Orders preſcribed by the ſaid Statutes, and the Prince in that caſe may grant a new Commiſſion to others to determine that Appeale. Et ceo fuit fait per lopinion del pluſors des Juſtices en le caſe de Goodman deprive del Deanery de Wells.

Nota, Stephen Gardener Eveſque de Winton, fuit deprive al Lambeth per Commiſſion del Roy E.6. fait a 10 perſons proceeding ſur ceo ex officio mero mixto vel promoto omni appellatione remota ſummarie de plano, abſque omni forma & figura judicii, ſola facti veritate inſpecta.

This caſe is in print, Dier fo. 209.a. Et vide Mich. 3 & 4 Eliz. Coveney Preſident del Novel Colledge in Oxon' deprive per le Eveſque de Winton, Viſitor del dit Colledge, & exempt de tout juriſdiction ordinary fait appeale al Roy in ſon Chancery, & Commiſſion illonque grant à A. Browne & Weſton Juſtices, que ſur conference ove auters Juſtices & Civilians, reſolve que le appeale ne giſt, ne aſcun auter remedie pur le appellant pur ceo que ceſti caſe fuit hors del dit Statute de 24 & 25 H.8. car ceſt deprivation eſt mere temporall, & come p ſey prov'. Ex quo ſequitur, que uni aſſiſe giſt, &c.

Nota, in appellis per Doctorem Lewes Judic' Admiral' & al' &c. Forasmuch as an Appeale is a naturall defence, it cannot be taken away by any Prince or power, and in every caſe generally when ſentence is given, and appeale made to the ſuperior, the Judge that did give the ſentence is bound to obey the appeale, and proceed no further untill the ſuperiour hath examined and determined the cauſe of appeale. Nevertheleſſe where this clauſe (appellatione remota) is in the Commiſſion, the Judge that gave ſentence is not bound to obey the appeale, but may execute his ſentence and proceed further, untill the appeale be received by the ſuperior, and an Inhibition be ſent unto him: for that clauſe (appellatione remota) hath three notable effects. The firſt is, that the juriſdiction of the Judge that gave ſentence, is not by the appeale ſuſpended or ſtopped, for he may proceed, the ſame notwithſtanding. The ſecond, that for proceeding to execution or further proces he is not puniſhable. The third, that thoſe things that are done by the ſaid Judge after ſuch appeale cannot be ſaid void, for they cannot be reverſed per viam nullitatis.

* Parliam. at Clarendon 10 H.2. cap.8. Mat. Par. pa. 97. * Rot. clauſ. in dorſ. anno 8 H.3. part. 1. m. 29. Rex Dublin Archiepiſc' &c. Rot. Parl. 18 E.1. Rot. 1. William de Valentia. & Rot. 3. nu. 39. Wil. de Martingham acc. See Hovenden fol. 284.

But if the appeale be juſt and lawfull, the ſuperior Judge ought of right and equity to receive and admit the ſame, as he ought to doe Juſtice to the ſubjects. And ſo if the cauſe of the appeale be juſt and lawfull, he ought to reverſe and revoke all mean Acts done after the ſaid appeale in prejudice of the appellant. Thus far the Report of the Lord Dier truly tranſlated.

*At the Parliament holden at Clarendon called Aſſiſa de Clarendon Anno 10 H.2. cap.8. the formes of appeales in cauſes Eccleſiaſticall, are ſet down within the Realm, and none to be made out of the Realm. Ne quis appellat ad dominum Papam. * Rex ægrè tulit appell' ad Papam in cauſa Baſtardiæ, ut contra dignitatem Regis de Conſilio igitur (the Record ſpeaking in the perſon of the King) magnatum & fidelium nobis aſſiſtent' vobis mandamus, firmiter injungentes quatenus non obſtante appellatione præmiſſa non differatis pro eo ſententiam, &c. So as the firſt Article of the Statute of 25 H. 8. concerning the

prohibition of Appeales to Rome is declaratory of the ancient Law of the Realme.

* And it is to be obſerved, that the firſt attempt of any appeale to the See of Rome out of England was by Anſelme Biſhop of Canterbury, in the reigne of William Rufus, and yet it took no effect.

* Hayward Doctor of the Civill and Canon Law in the life of William 2.

See 8 Eliz. cap. 5. an appeale in Civill and Marine cauſes before the Lord Admirall, &c. a ſentence before Commiſſioners delegates is finall.

8 Eliz. cap. 5.

See before pag. 125. upon a ſentence given by the Conſtable and Marſhall proceeding by the Civill Law in cauſa Armorum, there lyeth an appeal to the King, but none of the ſaid ſtatutes extend to this kind of appeal.

See Rot. cl. Anno 30 H. 3. part. 2. m. 11. de Appellatione pro Rege fac' in electione Abbatiſſæ de Shaftesbury.

¶ The Court of the Commiſsioners of Review *ad Revidendum.*

Albeit the ſaid Acts of 24 H. 8. and 25 H. 8. doe upon certain appeales make the ſentence definitive as to any appeale, for the words be [ſhall be definitive] and that no further appeale ſhould be had; yet the King after ſuch a definitive ſentence, as ſupreme Head, may grant a Commiſſion of review, ad revidendum, &c. for 2. cauſes. 1. For that it is not reſtrained by the Statute. 2. For that after a definitive ſentence the Pope as ſupreme head by the Canon Law uſed to grant a Commiſſion ad revidend: and ſuch authority as the Pope had, claiming as ſupreme head, doth of right belong to the Crowne, and is annexed thereunto by the ſtatutes of 26 H. 8. cap. 1. and 1 Eliz. cap. 1. And ſo it was reſolved in the Kings Bench Trin. 39. Eliz. where the caſe was, that ſentence being given in an Eccleſiaſticall cauſe in the Country, the party grieved appealed according to the ſaid Act of 25 H. 8. to the Archbiſhop, before whom the firſt ſentence was affirmed. Whereupon according to the Statute of 25 H. 8. he appealed to the Delegates: before whom both the former ſentences were repealed and made void by definitive ſentence, and thereupon the Queen as ſupreme head granted a Commiſſion of Review, ad revidend the ſentence of the Delegates. And upon this matter a Prohibition was prayed in the Kings Bench, pretending that the Commiſſion of Review was againſt Law, for that the ſentence before the Delegates was definitive by the Statute of 25 H. 8. But upon mature deliberation and debate the Prohibition was denyed, for that the Commiſſion for the cauſes aboveſaid, was reſolved to be lawfully granted. In this caſe I being then the Queens Attorney was of Counſell to maintain the Queens power. And preſidents were cited in this Court in Michelots caſe, Anno 29 Eliz. and in Goodmans caſe, and Huets caſe, in 29 Eliz. alſo. See the ſtatute of 8 Eliz. cap. 5. and obſerve like words in that Statute, ut ſupra.

24 H. 8. ubi ſupr.
25 H. 8. ubi ſupr.

Trin. 39 Eliz. in the Kings Bench Hollingworths caſe. Lib. Inter. Raſt. fol. 16. Appeale to Rome. Ib. Rome 389.

Upon a ſentence given by the High Commiſſioners, a Commiſſion of Review may be granted to and for the party grieved, as by an expreſſe clauſe within that Commiſſion appeareth. And if no ſuch clauſe had been therein, yet a Commiſſion of Review might have been granted: Quia ſicut fontes communicant aquas fluminibus cumulativè, non privativè; ſic Rex ſubditis ſuis juriſdictionem communicat in cauſis Eccleſiaſticis vigore Statuti in hujuſmodi caſu editi & proviſi cumulativè, non privativè, by conſtruction upon that Act.

The High Commiſſion.

Le Court des Conſervators des priviledges de St. *Johns* de Jeruſalem, &c.

There were two Courts holden coram Conſervatoribus privilegiorum, the one Hoſpitaliorum, and another Templariorum. Of whoſe jurisdiction, and of their reſtraint to grant any generall Citations priuſquam exprimatur ſuper qua re

W.2.cap.43. fieri debeat citatio, & ſi viderint hujuſmodi conſervatores quod petatur citatio de aliqua re cujus cognitio ſpectat ad forum regium, hujuſmodi conſervatores nec citationes faciant nec cognoſcant, **as by the ſtatute of** W.2. **appeareth.**

See the Second part of the Inſtitutes, **the Expoſition upon that ſtatute.**

The Templers were diſſolved in 4 E.2. **and the Hoſpitlers in** 32 H. 8. **ſo as theſe Courts are determined.**

Now for a concluſion concerning England, I have reſerved to ſay ſomewhat for the honour, and ſupreame Eſtate of both the Relatives of our Soveraign Lord the King, and of this his Kingdome, which I conceive to be neceſſary to that which in this part of the Inſtitutes we have taken in hand, for that it graceth and ſtrengtheneth all the reſt.

24 H.cap.12. **By the whole Parliament of** 24 H. 8. **wherein, beſides the Archbiſhops and Biſhops of the Realm, there were** 29 **Abbots and Priors Lords of Parliament: It was reſolved, and ſo declared by an Act,** That by divers and ſundry old antique Hiſtories, and Chronicles, it is manifeſtly declared, and expreſſed, that this Realme of England is an Empire, and ſo hath been accepted in the world, &c.

Vid.ſtat.de 28. cap.2.in Hibernia. **But againſt the truth hereof, oppoſition hath been made. Firſt, that this is the only Parliament that hath affirmed it. Secondly, that this Declaration is unjuſt and untrue, and that Hiſtory or Chronicle doth not affirm the ſame.**

As to the firſt I anſwer: that one Act of Parliament is inſtar omnium, **being a proof of the unanſwerable and higheſt nature, but this is not the only; for ſo much in effect (as to this point) is affirmed by all the Lords Spirituall & Temporall, and the Commons by Authority of Parliament long before the reign of** H. 8. **that the Crown of England hath been ſo free at all times, that it hath been in no Earthly ſubjection, but immediately ſubject to God in all things touching the regality of the ſame Crown, and to no other.**

Stat. de 16 R.2. cap.5. An.domini 1392. Rot.Clauſ.13 E.2. m.6. **Publique Notaries made by the Emperor claimed** de jure **to exerciſe their offices here in England, but becauſe it was againſt the dignity of a ſupreame King, they were prohibited by the Kings writ.**

Bracton who wrote in the reign of H.3. Lib.1.ca.8.nu 5. Anno dom.1270. **And long before, theſe by the ancient law of the Crown of England, were due to the King.** Omnis quidem ſub rege, & ipſe ſub nullo, ſed tantum ſub deo. (Et ibidem paulo poſt eodem numero) Ipſe autem rex non debet eſſe ſub homine ſed ſub deo, &c.

Int.leges Edovardi cap.17. An. Dom.1050. **And therewith agreeth the Law before the Conqueſt.** Rex autem, quia Vicarius ſummi regis eſt, ad hoc eſt conſtitutus, ut regnum terrenum, & populum domini, & ſuper omnia ſanctam veneretur Eccleſiam ejus & regat, & ab injurioſis defendat, & maleficos ab ea evellat, & deſtruat & penitus diſperdat.

Anno dom.169. **And long before that** Anno 169. à paſſione Chriſti dominus Elutherius Papa Lucio regi Brytanniæ ſcripſit, ad petitionem regis & procerum regni Brytanniæ. Petiſtis à nobis leges Romanas & Cæſaris vobis tranſmitti, quibus in regno Brytanniæ uti voluiſtis: Leges Romanas & Cæſaris ſemper reprobare poſſumus, legem dei nequaquam. Suſcepiſtis enim nuper miſeratione divina in regno Brytanniæ legem & fidem Chriſti, habetis penes vos in regno utranque paginam, ex illis dei gratia per conſilium regni veſtri ſume legem, & per illam dei patientia veſtrum reges Brytanniæ regnum, Vicarius vero dei eſtis in regno, &c. **and higher I cannot goe.**

21 E.4.nu.19. **And by the way it is to be obſerved in the ſeverall grants by Abbots and Priors made to King** E. 4. **they ſeverally ſtile him by theſe very words,** Supremus Dominus noſter E.4.Rex.

25 H.8.ca.21. **And by three other Acts of Parliament,** viz. **by the ſtatute of** 25 H. 8. cap.21. **wherein by Authority of Parliament it is enacted and declared (directing their Declaration to the King)** That this your Graces Realm recognizing no Superior under God but onely your Grace, hath been and is free from ſubjection to any mans lawes, but onely to ſuch as have been deviſed, made and ordained within this Realm for the wealth of the ſame, or to ſuch other, as by ſufferance of your Grace and your progenitors, the people of this your Realm have taken at their

free

free liberty by their own conſent to be uſed amongſt them, & have bound themſelves by long uſe and cuſtome to the obſervance of the ſame, not as to the obſervance of the laws of any forain Prince, Potentate, or Prelate, but as to the cuſtomed and ancient laws of this Realm originally eſtabliſhed as laws of the ſame, by the ſaid ſufferance, conſents and cuſtome, and none otherwiſe.

And by the ſtatutes of 25 H.8.cap.21. 1 El.cap.1. **and** 1 Jac.cap.1. **the Crown of this Kingdome is affirmed to be an Imperiall Crown.** 25 H.8.cap.21. 1 El.cap.1. 1 Jac. cap.1.

As to the ſecond: I might anſwer * that Le Court de Parliament eſt de treſgrand honor & Juſtice, de que nul home doit imaginer choſe diſhonerable. **And with the Doctor and Student upon the Statute of** 45 E.3. cap. **That it cannot be thought that a ſtatute that is made by the Authority of the whole Realm as well of the King, and of the Lords Spirituall and Temporall, as of all the Commons, will recite a thing againſt the truth.** * Pl.Com. 398.b. Doct.& Stud.fo. 164.cap.55.

But to be ſhort, King Edgar **ſtiled and ſubſcribed himſelf in his Charter,** Baſileus, Imperator & dominus, **which you may read in the Preface to the Fourth part of my Reports.** Vide Rot.Pat.1 E.4.parte 6.m.23. The like Charter to the houſe of Donnington by King Edgar.

Edward **commonly called St.** Edward **ſon of King** Edgar **in a Charter which he made to the Abby of Ramſey (which I have) ſtiled himſelf,** Ego Edwardus totius Albionis Dei moderante gubernatione baſileus.

Another Charter of King Edwine **to the Abby of Crowland intituled,** Carta regis Edwini filii regis Edmundi fratris regis Edgari de terris in Jeckelea. **Wherein he is ſtiled** Edwinus Anglorum rex & totius Britannicæ telluris gubernator & rector, **and many others.**

To conclude this point with a late and learned writer, whom I will cite for that he agreeth with the former Authorities, he ſaith, that the regall eſtate and dignity of a King is of two manners. The one is Imperiall or Supreame, ſuch a one is our Soveraign Lady Elizabeth **by the grace of God Queen of England, France and Ireland, which Soveraign Queen holdeth her Empire and Kingdomes with her people and Subjects immediately of the Lord of Heaven and Earth, without any other mean ſeignior or attendancie of corporall or bodily ſervice or allegiance to any other worldly Prince or Potentate, maugre the head of either her forain enemies or inteſtine and homeborn traiterous vaſſals, and alſo from her ſentence (ſhe and we all her faithfull and loyall ſubjects acknowledging to her eſtate no Superior) lyeth no Appeal.** I.F. of the Inner Temple, in his book intituled, *The glory of generoſity.* p.140,141.

There is alſo a King, and be a Homager or Feudotary to the Eſtate and Majeſty of another King as to his ſuperiour Lord, ec. As that of Navar and Portugall to the King of Caſtell: the Kingdomes of Granado and Leons to Aragon: the Kingdomes of Lombardy, Sicill, Naples and Bohemia to the ſacred Empire: the old Kingome of Burgundy, and now the late erected title of the King of Aries, to the King of the French men; and ſo forth of the reſt.

The King which is Supreame and Imperiall is equivalent within his Land to the power and authority that Ceſar can challenge within his own Dominions, and ſuch a King challengeth of right to ſet upon his head a * Crown Imperiall with a Diademe elevated on high, to ſignify the perfection and greatneſſe of their eſtate; but to the other Kings homagers a Crown not elevated is due. And that we may (as duty is) both with reverence and dutifull fear diſcern and judge the office and function of our Soveraign to be moſt holy and ſacred; let us ſee with what honors a ſoveraign King (ſuch a one as is her Majeſty) is illuſtrated and made redoubted to his ſubjects, firſt, what great Majeſty, honor, power, and glory is intended by ſetting a Crown upon her head, for in the reverend and majeſticall Action of Coronation, ſhe is firſt anointed, then bleſſed, after that conſecrated; to ſignifie unto her and unto us that ſhe is of God, that her power is from Chriſt, and that ſhe is to rule over Chriſtian people: the Crown ſet on her head is called triumphant, and it is of gold to ſignifie her excellent Majeſty; it is called triumphant by reaſon that the like Crown in faſhion and form was given the Emperours and Captains of the Romans in their triumphs over Kings and Nations. This Crown triumphant is moſt due to her excellent Majeſty even Nota. * A Crown Imperiall. With what Majeſty crowned. A Crown triumphant.

by the ſtrict courſe of laws of Arms, ſince that her Anceſtors have triumphed over many Kings and mighty people, as H. 1. over five Kings of Ireland, E. 1. triumphed over the Scottiſh and Welch Nations. E. 3. and H. 5. both of them over France. In the triumphant Crown of our ſoveraign Lady there be placed (not only for the ornament of her regall Diademe, but alſo to ſignifie the Princely vertues of a King) twelve Gems or ſtones of pretious eſteem.

And for this Kingdome of England, the other part of the Relative, hear what an ancient Poet hath ſaid.

Bartholomæus.

Anglia gens fortis, & fertilis angulus orbis:
Inſula prædives quæ toto vix eget orbe,
Et cujus totus indiget orbis ope.
Anglia plena jocis, gens libera & apta jocari,
Libera gens, cui libera mens, & libera lingua;
Sed lingua melior liberiórque manus.

The Anſwer to certain objections againſt the Kings Stile of Defender of the Faith.

This Bull you may ſee in Speeds Chronicle, p. 759. nu. 41. Anno dñi 1521. 13 H. 8. See Laert. Cherub. Bullar. tom. 1. pag. 619.

And where ſome doe object that the King our ſoveraign Lord ought not de jure to enjoy the title and ſtile of Defender of the Faith, Defenſor fidei: for (ſay they) Pope Leo decimus, Anno Pontificatus ſui, by his Bull granted the ſame to King H. 8. & poſteris ſuis. Well, veritas à quocunque dicitur, à deo eſt. But they ſay that by the Bull of Pope Paul the third, againſt King H. 8. upon his ſuppreſſion of the leſſer houſes of Religion in Anno 27 H. 8. he did not onely depoſe him of this title, but of his Crown alſo, and gave his Kingdome to him that could get it: which, ſay we, was done de facto, ſed non de jure; and we confeſſe alſo that by colour of that Bull, Pope July the third in his Bull to King Philip & Queen Mary his direction was Chariſſimis in Chriſto filiis noſtris Philippo regi & Mariæ reginæ illuſtribus, wherein he omitted the title of Defender of the faith: but beſides the Popes Bull, which (as it ſeemeth) is countermandable at his pleaſure, the King hath a ſurer right thereunto to this ſtile, for by the full conſent of all the Lords Spirituall and Temporall and the Commons aſſembled in Parliament,

35 H. 8. cap. 3.

and by Authority of the ſame, in Anno 35 H. 8. it is enacted, that all his Majeſties ſubjects ſhould from thenceforth accept and take his Majeſties ſtile as it is declared and ſet forth in manner and form following, that is to ſay, in the Latine tongue by theſe words; Henricus octavus dei gratia Angliæ, Franciæ, & Hiberniæ Rex, fidei defenſor, & in terra Eccleſiæ Anglicanæ & Hiberniæ ſupremum caput: and in the Engliſh tongue by theſe words; Henry the eight by the grace of God King of England, France, and Ireland, Defender of the faith, and of the Church of England, and alſo of Ireland, in Earth ſupreame head: and that the ſaid ſtile ſhould be from thenceforth by authority aforeſaid united and annexed for ever to the Imperiall Crown of his Highneſſe Realm of England. Hereunto it is objected, that this Act of Parliament is repealed by the Act of 1 Mar. but that is miſtaken, for as the treaſons made and enacted by ſubſequent clauſes of the ſaid Act of 35 H. 1. are repealed by the Act of 1 Mar. but the ſtile and title of the Crown without queſtion remaineth of force unrepealed; and accordingly Queen Mary in all her ſeverall Seſſions of Parliament before her mariage and after her mariage, ſhe and King Philip uſed the ſtile and title of Defender of the faith in all their Parliaments, Letters Patents, &c. according to the ſaid Act of 35 H. 8. and by the way ſhe uſed the title alſo of Supremum Caput in the ſecond Seſſion of her Parliament in the firſt year of her reign. And by the reſolution of the Judges in

1 Mar. Dier 94.

anno 1 Mar. it appeareth that the ſtatutes of 26 H. 8. cap. 1. & 35 H. 8. cap. 3. concerning the ſtile of the King remains in force, for thereupon did the queſtion depend: ſo as albeit Pope July in his Bull vouchſafed not to give King Ph. & Q. Mary their ſtile of Defender of the faith, yet both ſhe before, and both of them after their mariage, according to their right took it upon them notwithſtanding the thundring Bull of Pope Paul the third. Laſtly, all the Kings and

Queens

Queens regnant of England have at their Coronation time out of mind been sworn to defend the faith, and therefore were of common right Defenders of the Faith: by reason of which Oath they may take upon them the stile, and are more firmely bound to performe and doe it, then by the Popes Bull.

Having spoken of England, and of the pety Islands and Dominions of the same, and intending to speak of that noble Island and Kingdome of Ireland, I could not passe over that ancient and renowned Kingdom of Scotland wholly in silence, but as it were to salute it by the way, and yet to adde somewhat, which none that have written of that Kingdom have (to my remembrance) touched.

CAP. LXXV.

Of Scotland.

COncerning this Kingdome there are many things worthy of observation.

1. That these two mighty, famous, and ancient Kingdoms, viz. England and Scotland (I use the words of the Act of Parliament) were anciently but one. 1 Iac. Regis ca. 1.

2. That one Religion and service of God is holden and celebrated by both. Vide 4 Iac. ca. 10. & 7 Iac. cap. 1.

3. That as there is one Language in both, so there was one kind of government and one law in ancient time that ruled both with many unanimous agreements between them, which evidently appeareth by many proofs. First, that the Lawes of Scotland are divided as the Lawes of England be into the Common laws, Acts of Parliament, and Customes. Their Common laws are principally contained in two Books. The first called Regiam Majestatem, because it beginneth (as Justinians Institutes doe) with these words [Regiam Majestatem.] 11 Iac. Regis c. 1. & 2. in Ireland.

The second Book is called Quoniam Attachiamenta, because it beginneth with those two words.

The first Book doth in substance agree with our * Glanvil, and most commonly de verbo in verbum, and many times our Glanvil is cited therein by speciall name.

* First printed by the perswasion & procurement of Sir *will Stanford* a grave and learned Iudge of the Common Pleas *Anno Dom.* 1554. 1 & 2 Ph. & Mar. Of whom hear what *Hovenden* saith *Anno Dom.* 1180. (et regni H. 2. 26.) Henricus Rex Angliæ pater constituit Ranulphum de Glanvilla summum Iusticiarium totius Angliæ, cujus sapientia conditæ sunt leges subscriptæ quas Anglicanas vocamus. This *Hovenden* lived in the reigne of H. 2. and died in the time of King *John*. See Pl. Com. 368. b. per *Catlyn* in Epist. to the eight Book of Reports,

Secondly, the Crown of Scotland is descendible to the Daughter or heir Female where there is no issue Male. If there be many Daughters or heirs Female, it descends to the eldest. Likewise they have the like descents of lands to Subjects as England have, as none can inherit in the right Line ascendant. The eldest Daughter hath initiam partem. All the Daughters of Subjects do inherit.

Thirdly, they have the High Court of Parliament, as we in England have, and called by the same name, consisting of the same Members, viz. Lords Spirituall, Lords Temporall, and the Commons. It is summoned and called at the Kings pleasure for a certain time. When they meet, the King or his Chancelor sheweth the causes of calling them together. But there of latter times the Lords Spirituall doe choose eight Temporall Lords, and the Lords Temporall choose eight Spirituall Lords. These sixteen make choice of eight chosen for the Counties, and eight of Cities and Burghes, in all thirty two. But whatsoever is agreed upon by them, the King doth allow or disallow by moving of his Scepter, &c. Parliament.

Fourthly, they have the same degrees of Nobility, as Dukes, Marquesses, Earls, Viscounts, Barons, &c.

Fifthly, they have the same great Officers, as Chancelour, that keepeth the Great Seal, Lord Treasurer, Lord Privy Seal, Secretary, &c.

Sixthly,

Sixthly, and the ſame Miniſters of Juſtice, as Sheriffs, Coroners, &c.

Seventhly, the ſame laws for the moſt part quarto modo appropriated to England, viz. Tenant by the curteſie, becauſe they had the ſame law that England had.

Eighthly, the like Writs, Brevia, as de Recto, Aſſiſe of Novel Diſſeiſin', Mordanc', De gard, De Ideot' inquirend', De diviſis fac', Replegiar', Attachm', &c.

Ninthly, they agree with Magna Carta concerning Wardſhips, &c.

Tenthly, with Carta de foreſta cap. 11. for it is lawfull for Biſhops, Earles, and Barons comming or returning through the Kings Foreſts at the Kings command to kill one or two Beaſts in the ſight of the Foreſter, or otherwiſe in his abſence to blow his Horn, that he appear not to take it thieviſhly.

11. The Lord of whom the land is holden by Knights ſervice per antiquius feoffamentum ſhall have the wardſhip of the body.

12. The Sheriffes ſhould cauſe the Acts of Parliament to be proclaimed, &c. All which, and many more are the ancient laws of both Kingdoms, as it appeareth in the ſaid Books of Regiam Majeſtatem, & quoniam attachiamenta, &c.

13. The Sheriffes there have an inheritance in their Office, as ſometime in England they had, and yet in Cumberland they have.

14. The ſame Vocables of art are uſed in the laws of both Kingdomes, as Ordelium, *i.* the Court of Water and Iron, Filius mulieratus, Marchetum, Serplaith, or Sorpler, Judicamenta, &c. Machamenum or Mahemium, Murdrum or Murcharum, Chancemeley, Mote, Miſericordia, Meſſuagium, Flightwight, Medletum, Remanere, Manerium, Recognitio per Aſſiſam, Pipowdres, Pannagium, Ora, Nonclayme, Soc, or Sok, Serjanteria, grand Serjeanty, pety Serjeanty, Sectator, a Sulter, Sheriffs of inheritance there, the Sheriffs Court or County Court, Toll, Tunbrellum or Tumbrellum, Thainus, Soccage, Burgage, Servicium militare, Relief or Releve, Them & Teme, Theifbote, In libera Eleemoſyna, Terræ Dominicales, Liberum tenementum, Vidiare duellum, Warrenna, or Varenna, Valvaſores or Vavaſores, Waif, Stray, Caſtleward, Veredictum, Vicidarii, Infangthief, Outtangthief, Outlawry, Outlawed Juſtice in Eire, Wreck of the Sea, Voucher, Vicenetum, Hamſockne, Hida terræ, Bovata terræ, Heriot or Heregeld, Huteſium or Hueſium, Regrateurs, Foreſtallers, a Guilde, talkſtying of dooms or recovery, Quarentena, Felonia, Feodum, Homage, Fealty, Eſtroverium, eſſonium, enitia pars, Diſparagement, Diſſeiſons, Diſclaimer, Scaccarium, Colliſtrigium, Champertie, Maeremium, Averia, Catalla, Bote, Bloodwite, Grand Aſſiſe, Aſſiſe of novel diſſin', Barettors, Affidavit, Adjournment, Reſponſals, Attorntes, and many others.

There was an Heptarchy in Scotland but now a Monarchy. There are there two Archbiſhops, the one of S. Andrew, the other of Glaſco: S. Andrew hath eight Biſhops under him, and Glaſco three.

There are there thirty Counties or Sheriffdoms.

The ancient Motto of the King of England is, God and my right (*intelligitur*) ſhall me defend. Of the King of Scotland, In my defence God me defend.

There are alſo two famous Univerſities, one in S. Andrews, the other in Glaſco.

The length of Scotland from Twede to the uttermoſt Coaſt is 480 miles: it is longer then England, but narrower, and endeth like a Wedge.

Of ancient time all the Biſhops of Scotland were ſacred, and confirmed by the Archbiſhop of York.

But by reaſon of their Acts of Parliament, which in many points have altered, diminiſhed, and abrogated many of the old, and made new laws and other proceedings: the diſtinct Kingdomes as they now ſtand have many different Lawes.

Parl. 3 Jac. 1 ca. 48. 11 Martii Anno Dom. 1425.

Item, It is ordained by the King by conſent and deliverance of the three Eſtates, that all and ſingular the Kings Lieges of the Realm live and be governed under the Kings laws and ſtatutes of the Realm allanerly: and under na particular laws, nor ſpeciall priviledge, nor be na laws of uther Countries nor Realms.

Item,

Item, It is ſtatute and ordained, That all our Soveraigne Lordis Lieges beand under his obeiſance, and in ſpeciall the Iſles be ruled by our Soveraigne Lordis awn laws, and the Common laws of the Realm, and be nane uther laws. Parl. Jacobi 4. cap. 75. 11 Martii Anno Dom. 1503

King James at his Parliament holden Anno 1. of his reigne, endeavoured to have made an union of both Kingdomes, and to have erected a new Kingdome of Great Britain. And thereupon authority was given to certain Commiſſioners of the higher and lower Houſe of Parliament, to treat with certain Commiſſioners of Scotland for and concerning an union of both Kingdomes. Amongſt theſe Commiſſioners there grew a queſtion, whether there could be made an union of the Kingdomes by raiſing a new Kingdome of great Britaine, before there was an union of the Lawes. Which queſtion by the Kings commandment was referred to all the Judges of England in Trinity Terme, Anno 2 Jac. who unanimouſly reſolved (I being then Attorney generall, and preſent) That Anglia had lawes, and Scotia had lawes, but this new erected Kingdome of Britannia ſhould have no law. And therefore where all the judiciall proceedings in England are ſecundum legem & conſuetudinem Angliæ, it could not be altered ſecundum legem & conſuetudinem Britanniæ, untill there was an union of the lawes of both Kingdomes, which could not be done but by * Authority of Parliament in either Kingdome. 1 Jac. cap. 2. Vid. ſupra p. 36. * Ex inſtrumento Lib. Hoſp. Sancti Leonardi in Com. Eborum. Egbert Rex in Parliamento apud Wintoniam mutavit nomen Regni de conſenſu populi ſui, & juſſu illud de cætero vocari Angliam. Iſte Rex Egbertus obiit Anno Dom 673.

Anno 3 Ja. ca. 3. An Act made for things to be done by force of the ſaid Act of 1 Ja. cap. 2. in any other Seſſion of Parliament.

Anno 4 Ja. cap. 1. A repeale of hoſtile lawes and of hoſtility between England and Scotland, &c. And it is enacted, that no Engliſhman ſhall be ſent out of England into Scotland for any offence done in Scotland, untill ſuch time as both Realmes ſhall be made one in lawes and government. So as the reſolution of the Judges was approved by Parliament. See a Proclamation 20 Octob. 2 Jac. concerning the Kings ſtile of King of Great Britaine, wherein all judiciall and legall proceedings, &c. are excepted. See a Proclamation 15 Septemb. 1603. 2 Ja.

I never read of any union of divided Kingdomes, and therefore I conceive it to be without preſident. And in this union many things would fall into conſideration, and thoſe of great weight, other then the union of lawes, though that be a maine one: As for example, the ſeverall Crownes are deſcendible to ſeverall heires of * blood. And queſtion may be made who ſhould be heire of this new Kingdome. * H. 7.

But the learned Poet hath found out an union without danger, directing his verſes to King James.

Cum triplici fulvum conjunge Leone Leonem,
Ut varias Atavus junxerat antè Roſas.
Majus opus, varios ſine cæde unire Leones,
Sanguine quàm varias conſociaſſe Roſas.

Whoſoever is deſirous to know ſuch Miſcellanea as we have obſerved concerning Scotland, let him read theſe Records and Authorities following.

The Records of Parliament from the beginning thereof, for the receivers and tryers of Petitions in the Lords houſe, Rot. liberat. anno 3 Ed. 1. m. 2. per Johannem Lovetot, Rot. paten' anno 20 Ed. 1. Gilberto Comiti Glovorniæ & Hereford. Scotia. Rot. Parliament. 21 Ed. 1. inter placita. Rot. 1. & 2. Hovenden 1194. pag. 7. carta Regis R. 1. Mat. Weſtm. Anno Dom. 1260. pag. 302. H. 3. Rot. Scotiæ 21 E. 1. Carta F. 1. & Iſræ Alexandri Regis Scotiæ. Rot. Vaſconiæ 25 E. 1. m. 2. 3. in dorſ. Trin. 25 E. 1. coram Rege Rot. 6. Norff. Raſe de Tonyes caſe. Anno 29 E. 1. Iſræ quas Rex per ſe & quas Comites & Barones Angliæ per ſe miſerunt Domino Papæ anno 29 E. 1. authoritate Parliamenti, quæ irrotulatæ ſunt etiam in Scaccario. Vid. VValſingham 48 & 49. Rot. Parl. apud Linc. 29 E. 1. Anno Dom. 1300. Literæ omnium Nobilium Angliæ, &c. Papæ.

Rot. pat. 24 E. 1. Epiſcopis Scotiæ. Mich. 33 E. 1. coram Rege Rot. 127. Scotia,

tia, Rot. Parl. 35 E.1. in brevi de Parliamento, & auter 1 E.2. 1 E 3. fo. 17. Grayes caſe. 6 E. 3. 18. The* Abbot of Crowlands caſe. 9 E. 3. 6. John Darcyes caſe. Rot. pat. 10 E. 3. 2. ps. Comes Arundel. Rot. Parl. 14 E. 3. nu. 15. ſtat. 4. Rot. Clauſ. 22 E. 3. & 23 E. 3. breve de Parliamento magnifico Principi, &c. 22 Aſſ. p. 85. 39 E. 3. fo. 35. Rot. Parliament. 42 E. 3. nu. 7. 42 E. 3. fo. 25. 8 R. 2. tit. Cont. clayme. pl. ultimo. 13 H. 4. fo. 5. Rot. pat. 2 H. 5. part. 3. m. 1. 8 H. 5. fo. 5. 32 H. 6. 25. 20 E. 4. 6. b. Litt. ſect. 100. & 165. 1 part of the Inſtitutes. Stat. de 2 & 3 E. 6. cap. 36. Forteſcue cap. 13. Pl. com. 126. Dier manuſcript 3 Eliz. 22. b. & 13 Eliz. fo. 68. m. 5. Dier 12 Eliz. fo. 287. in print. Lib. 7. fo. 22, 23. &c. Calvins caſe. Lib. 9. fo. 114. Seignior Zanchers caſe. **See before in the Chapter of the High Court of Parliament.**

Hiſtoriæ. Polydor. Virgil. Hollinſh. 1 part. fo. 116, 117. 2 part. 286. Stowe 303. Math. Weſtm. 428, 425. 443, 444, 445. Walſingham 17, 28, 32, 129, &c.

Thus have you all which we have obſerved in our reading concerning this matter, and which the benevolent Reader may peruſe at his pleaſure; to whoſe cenſure we wholly refer the ſame. Multi multa, nemo omnia novit.

You have obſerved, that thoſe of Scotland doe agree with us in language, and as hath been ſaid, differ in lawes. On the other ſide, the Subjects of Ireland differ from us in Language, and agree with us in Lawes, and therefore of them we ſhall ſpeak ſomewhat the more at large.

Bede in Hiſtory of England lib. 1. cap. 1. * Redſhanks.

Amongſt variety of Authors from whence this noble Nation of the Scots originally came, we follow Venerable Bede **in his Hiſtory of England, lib. 1. cap. 1. and alſo from whence the * Picts originally came. And there you ſhall reade, that the Picts arriving in Britania planted themſelves in the north parts thereof, for the Britains had taken up the South part before. And whereas the Picts having no wives did require the Scots to marry their daughters, the Scots agreed to grant them their boone, under condition, that as often as the matter was in doubt, they ſhould chooſe their King rather of the nert of the houſe of the woman then of the man.**

Cap. 13. *Et lib. 2. cap. 4.

And that Palladius **in the eighth year of** Honorius **the Emperour,** Anno Domini 411. **was ſent by** Celeſtinus **Biſhop of Rome to the Scots that had received the faith of Chriſt, to be their firſt Biſhop.**

Beda in his Hiſtory of England, lib. 1. cap. 11. Vid. ſupr. p. 157.

*** That the Scots doe nothing differre from the Britains in their converſation.**

Both theſe famous Kingdomes have found by woefull experience, that unwiſe and incertaine making of leagues, greatly indamageth the Commonwealth, and the fatall danger of ſuch leagues to the Princes themſelves.

CAP.

CAP. LXXVI.

Of the Kingdome of *Ireland*.

WE ſhall not need to undertake another worke to write of the Courts of Juſtice there, for that they have the ſame which we have in England, and the ſame Law, ſaving, where ſome that have written of them have in ſome maine points miſtaken the matter; we will convince the ſame by direct matter of Record, and we intend to adde ſome things which are neceſſary to be known, which no man that hath written of that Country hath touched, or if they have remembred the ſame, it is with ſo light a touch, as much is omitted out of the Record, or caſe reſolved it ſelfe, worthy to be known, which we intend to ſupply for the honour of the King, and benefit of his ſubjects there. And the rather, for that I have been informed by many of them that have had judiciall places there, and partly of mine owne knowledge, that there is no Nation in the Chriſtian world that are greater lovers of Juſtice (whereof we ſhall principally treat) then they are, which vertue muſt of neceſſity be accompanied with many others; and beſides they are deſcended of the ancient Britaines, and therefore the more indeared unto us.

1 Jacobi cap. 1. & 11 Jac. &c. cap. 1. & 6. in Ireland. Vid. the 1 part of the Inſtitutes, Sect. 212.

Firſt, concerning the Parliament of Ireland, being the higheſt Court there, where ſome have ſuppoſed that the ſame beganne in 17 E. 3. we ſhall make it appeare by matter of Record, that then not only King John, as all men agree, but H. 2. alſo the father of King John, as * before it hath appeared, and in the next page ſhall be touched, did ordaine and command at the inſtance of the Iriſh, that ſuch laws as be had in England ſhould be of force and obſerved in Ireland: hereby Ireland being of it ſelfe a diſtinct Dominion, and no part of the Kingdome of England (as it directly appeareth by many Authorities in Calvins caſe) was to have Parliaments holden there as England; and thereupon in the reigne of King John himſelfe a Parliament was holden there, as by this Record enſuing appeareth.

Parliaments in Ireland of ancient time.

* Pag. 12.

Rex Comitibus, Baronibus, Militibus, & liberis hominibus, & omnibus aliis de terra Hibernia, Salutem. Quia manifeſtè eſſe dignoſcitur contra Coronam, & dignitatem noſtram, & conſuetudines, & leges regni noſtri Anglia, quas bonæ memoriæ Dominus Johannes Rex, pater noſter, de [a] communi [b] omnium de Hibernia conſenſu teneri ſtatuit in terra illa, quod placita non teneantur in Curia Chriſtianitatis de Advocationibus Eccleſiarum & Capellarum, vel de laico feodo, vel de catallis quæ non ſunt de teſtamento vel matrimonio. Vobis mandamus, prohibentes quatenus hujuſmodi placita in Curia Chriſtianitatis nullatenus ſequi præſumatis in manifeſtum dignitatis & Coronæ noſtræ præjudicium, ſcituri pro certo, quod ſi feceritis, dedimus in mandato Juſticiario noſtro Hibernia, Statuta Curiæ noſtræ in Anglia contra tranſgreſſiones hujus mandati noſtri cum juſtitia procedat, & quod noſtrum eſt exequatur. In cujus, &c. Teſte Rege apud Wincheomb 28. die Octobris, Anno Regni noſtri decimo octavo. Et mandatum eſt Juſticiario Hiberniæ per literas clauſas, quod prædict' literas patentes publice legi & teneri faciat.

Rot. Ann. 18 H. 3. m. 17. nu. 21. See the firſt part of the Inſtitutes Sect. 212.

[a] Nota, Rex de communi omnium conſenſu (ac communi conſilio teneri ſtatuit) is by Act of Parliament.

[b] Nota [omnium] that all received the Lawes, &c. Many things in theſe Letters Patents are worthy of obſervation.

But as true it is that the father of King John, viz. H. 2. when he had conquered Ireland, ſent that Treatiſe, intituled Modus tenendi Parliamentum, in a faire Parchment Roll, for their better holding of Parliaments there, which you may reade more at large before Cap. The High Court of Parliament, p. 12.

Rex Henricus 3. Anno regni ſui 12. mandavit Juſticiario ſuo Hiberniæ, ut convocatis Archiepiſcopis, Epiſcopis, Baronibus & Militibus ibidem coram eis legi faciat Cartam Regis Johannis, quam legi fecit, & jurari à Magnatibus Hiberniæ de legibus & conſuetudinibus Angliæ obſervandis, & quod leges illas teneant & obſervent.

Rot. pat. 30 H. 3.

*Quia pro communi utilitate terræ Hiberniæ, & pro unitate terrarum, proviſum eſt, quod omnes leges & conſuetudines quæ in regno Angliæ tenentur in Hibernia teneantur, & eadem terra eiſdem legibus ſubjaceat, ac per eaſdem regatur, ſicut Johannes Rex cum illic eſſet * ſtatuit, & firmiter mandavit. Ideo volumus quod omnia Brevia de Communi Jure quæ currunt in Anglia ſimiliter currant in Hibernia ſub novo Sigillo Regis. Teſte, &c. Apud Woodſtock.*

* Noti.

Coram Rege Mich. 33 E. 1. Rot. 124. Hibernia.

Major Dublin, qui querebatur verſ. Theſaurarium Scaccarii Dubline, & verſ. Barones Scaccarii de gravaminibus per ipſos illatis, remittitur Parliamento, & inde huc: cui per Curiam dictum eſt, quod gravamina ſua proponat, qui dicit quod non adhuc eſt conſultus, ſuper quæ dies datus eſt. Ad quem diem nullas propoſuit querelas, Ideo committitur Turri London, & finem fecit Domino Regi.

Sometimes the King of England called his Nobles of Ireland to come to his Parliament of England, &c. And by ſpeciall words the Parliament of England may binde the ſubjects of Ireland, as taking one example for many.

Rot. Parl. 8 E. 2. m. 31.

10. Octobris Rex affectans pacificum ſtatum terræ Hiberniæ, mandavit Ricardo de Burgo Com' Ulton' & aliis Nobilibus terræ prædictæ, quod ſint ad Parliamentum ſuum quod ſummoneri fecit apud Weſtm' in Octabis Sancti Hilarii prox' ad tractand' ibid' cum Proceribus, &c. regni ſui ſuper ſtatu terræ prædictæ.

An excellent preſident to be followed, whenſoever any Act of Parliament ſhall be made in England, concerning the ſtatute of Ireland, &c.

Rot. Parl. 35 E. 3. irrot. fic.

Anno 35 E. 3 De Conſilio ſummonit' pro ter' habentibus in Hibernia,

Maria Comitiſſa Norf.
Aelianora Comitiſſa Ormond.
Jana la Deſpencer,
Philippa Com. de la Marche,
Johanna Fitzwater,
Agnes Comitiſſa Penbroke,
Margareta de Roos,
Matildis Comitiſſa Oxoniæ,
Catherina Comitiſſa Athol.

ad mittendum fide dignos ad colloquium.

[a] Rot. Parl. anno 10 E. 2. Rot. claus. 10 E. 2. m. 38. & Rot. claus. 12 E. 2. m. 3. Annales Hiberniæ Anno Dom. 1369. 43 E. 3. Parliam. tent. apud Kilkenniam per Com. Ulton. & Johannem Wogan, Juſt. c. Hiberniæ & Magnates, &c.

[a] *De Parliamentis ſingulis annis in Hibernia tenendis, & de legibus & conſuetudinibus ibidem emendandis.*

Hereby it appeareth that there were Parliaments holden in Ireland before this time, and order taken at this Parliament that they ſhould be holden every yeer, and the like Acts were made in England in 4 E. 3. & 36 E. 3. for Parliaments to be holden in England.

[b] Rot. Par. 17 E. 2. 1. part. par. anno prædict. m. 3.

[b] *In Octabis Sancti Martini apud Nottingham Rex de conſenſu communis Conſilii ſui fecit tertias ordinationes pro reformatione ſtatus ſui Hiberniæ, & miniſtrorum Regis ibidem.*

[c] Int. Ordinationes pro ſtatu Hiberniæ anno 17 E. 3. in Turri, &c.

[c] *Volumus & præcipimus quod noſtra & terræ noſtræ negotia, præſertim majora & ardua, per peritos Conſiliarios, ac Prælatos, & magnates, & quoſdam de diſcretioribus hominibus in Parliamentis tractentur, diſcutiantur & terminentur:*

This

This Ordinance doth regulate the Parliaments in Ireland according to the inſtitution and end of the Parliaments in England, as in the Writ of Parliament, which is to conſer and treat De arduis & urgentibus negotiis nos (i. Regem) & ſtatum & defenſionem regni & Eccleſiæ Anglicanæ concernentibus; the effect whereof is contained in the Ordinance of 17 E. 3. but that Ordinance doth not erect any Parliament there, as ſome have (without any colour) ſuppoſed.

Vid. Lib. Album in Scaccario. Diverſe Acts here made concerning Ireland, and tranſmitted thither to be inrolled in the Chancery there.

See 20 H. 6. fo. 8. which began Mic. 18 H. 6. Rot. 46. coram Rege, & 2 R. 3. fo. 12. See before in the Chapter of the High Court of Parliament.

And ſeeing good and profitable Acts of Parliament made in the Realme of England ſince the reign of King John extended not into Ireland, unleſſe it were ſpecially named or by generall words included, * as within any of the Kings Dominions, a right profitable Act was made at a Parliament holden in Ireland in Anno 10 H. 7. before Sir Edward Poynings then Deputy or Prorex in Ireland, and thereupon called Poynings law.

* 25 H. 8. cap. 12. F. N. B. 1. 8. a. 12 R. 3. 12. Anno 10 H. 7. *Poynings* law. * Nota.

Whereby it is enacted, that * all ſtatutes late made within the Realm of England concerning or belonging to the common or publick weale of the ſame, from henceforth be deemed good and effectuall in the Law, and over that be accepted, uſed and executed within this land of Ireland, in all points at all times requiſite according to the tenor and effect of the ſame. And over that by the authority aforeſaid, that they and every of them be authoriſed, proved, and confirmed, in this ſame Realm of Ireland. And if any ſtatute or ſtatutes have been made within the ſaid Land heretofore to the contrary, that they and every of them by the authority aforeſaid be adnulled, revoked, and made void, and of none effect in the law.

And Hil. 10 Jacobi Regis, it was reſolved by the two Chief Juſtices and Chief Baron, that this word [late] in the beginning of this Act had the ſenſe of [before] ſo that this act extended to Magna Carta, and to all Acts of Parliament made in England before this Act of 10 H. 7. But it is to be obſerved that ſuch Acts of Parliament as have been made in England ſince 10 H. 7. wherein Ireland is not particularly named or generally included, extend not thereunto, for that albeit it be governed by the ſame law, yet is it a diſtinct Realm or Kingdom, and (as hath been ſaid) hath Parliaments there.

Books concerning Ireland.

Vide Bracton lib. 5. fo. 395. b. Temps E. 1. Voucher 239. 14 H. 3. ſtat. de Homage. 13 E. 2. Baſtardy 25. 7 E. 3. 9. 8 Aſſ. 17. Britton fo. 1. a. 45 E. 3. 19. Tr. 29 E. 1. coram Rege. 10 E. 3. 41 42. 11 H. 4. 7. 8 R. 2. Proces 224. 3 H. 7. 10. 7 E. 4. 27. Pl. Com. 368. 13 Eliz. Dier 303. 20 Eliz. Dier 360. Lib. 7. Calvins caſe. 1 part of the Inſtitutes Sect. 95.

How and in what manner a Parliament is to be holden in Ireland, *and how Bils ought to paſſe in the ſame.*

Parliaments in Ireland holden at this day.

The Lords of the Councell directed their Letters to the two Chief Juſtices and Chief Baron in theſe words.

Hil. 10 Jacobi Regis.

After our hearty commendations to your Lordſhips. Whereas his Majeſty for divers weighty conſiderations hath reſolved to hold a Parliament in the Realm of Ireland, and that by an Act made in the tenth year of *H.* 7. called *Poynings Act*, it is provided that all ſuch Bils as ſhall be offered to the Parliament there ſhall be firſt tranſmitted hither under the Great Seal of that Kingdome; and having received allowance and approbation here, ſhall be put under the Great Seal of this Kingdom, and ſo returned thither to be preferred to the Parliament: foraſmuch as there are accordingly tranſmitted hither from thence di-

vers Bils as well publick as private, ſome of which Bils were firſt agreed on here, ſome others were framed and conceived there, and comming now hither may happily receive amendment or alteration: we have thought meet for avoidance of any queſtion or inconvenience that may ariſe of the manner and form of proceeding in amending or altering of theſe Bils, hereby to pray and require you, calling to you his Majeſties Attorny and Sollicitor to look into *Poynings Act*, and to conſider of ſome ſuch courſe as ſhall be fit to be held concerning the ſame, &c.

Dated *Vltimo Januarii* 1612.

Whereupon in this Tearm the ſaid Chief Juſtices and Chief Baron, and the Attorny & Sollicitor were aſſembled two ſeverall dayes at Serjeants Inne, and had conſideration not only of the ſaid Act of 10 H. 7. cap. 4. **but of the Act of** 3 & 4 Ph. & Mar. cap. 4. **Intituled,** An Act declaring how Poynings Act ſhall be expounded and taken.

3 & 4 Ph. & Mar. cap. 4.

For by the ſaid Act of 10 *H.* 7. it is provided that no Parliament be hereafter holden in the ſaid land of Ireland, but at ſuch ſeaſon as the Kings Lieutenant and Councell there firſt do certifie the King under the Great Seal of that Land, the cauſes and conſiderations, and all ſuch Acts as them ſeemeth ſhould paſſe in the ſame Parliament, and ſuch cauſes, conſiderations, and Acts affirmed by the King and his Councell to be good and expedient for that Land, and his licenſe thereupon, as well in affirmation of the ſaid cauſes and Acts, as to ſummon the ſaid Parliament under his Great Seal of England had and obtained. That done, a Parliament to be had and holden after the forme and effect afore rehearſed. And if any Parliament be holden in that Land contrary to the form and proviſion aforeſaid, it be deemed void, and of none effect in Law.

Sur quel Act divers doubts & ambiguities fuer' conceivè & aſcuns de eux fuer' de greinder difficulty que autres.

1. *Et primerment un doubt fuit conceive le quel le dit Act de* 10 H. 7. *extend al ſucceſſors le Roy* H. 7. *intant quel' Act parle ſolement del Roy generalment & ne' de ſes ſucceſſors.* 2 *ſi le roigne Marie fuit deins ceſt parol* Roy. *Et coment que ceux ne fuer' matters daſcun ambiguity, car ceſt parol* Roy *que import ſon politique capacity ne unques mort, & eſteant parle indefinite extend in ley a touts ſes ſucceſſors, uncore ceo eſt iſsint expound per le dit Act de* 3 & 4 Ph. & Mar. *Et que le dit Act de* 10 H. 7. *extendra* to the King and Queens Majeſty, her Heirs and Succeſſors.

2. *Ou le Act de Poynings dit* (the Kings Lieutenant and Councell there) *ſcruple fuit conceyve, ſi le Roy appoint un per noſme de le Deputie, ou Lord Juſtice, ou ſil conſtitute* 2 Lords Juſtices, chief Governours or Governour, *& le Councell, &c. Et quant a ceux eſt explane per le Act de* 3 & 4 Ph. & Mar. *que le dit Act de Poynings extend a tout ceux.*

3. *Le greinder & pluis difficult doubt fuit ſur ceux parols in lact de Poynings.* And ſuch cauſes, conſiderations, and Acts affirmed by the King and his Councell to be good and expedient for that Land, &c. *Le quel le Roy poet fair aſcun change ou alteration des cauſes, conſiderations ou Acts que ſerr' tranſmiti' icye del Lieutenant & Councell d' Ireland, car ceo neſt pas affirmation mes correction & alteration de eux. Et pur ceo fuit neceſſary deſtre explane, que Lact de* 3 & 4 Ph. & Mar. *fait in ceux parols.* Either

ther for the paſſing of the ſaid Acts, &c. in ſuch forme and tenor as they ſhould be ſent into England, or elſe for the change and alteration of them, or any part of the ſame.

4. *Auter queſtion fuit ſur les parols del primer Act. ſc.* That done a Parliament to be had and holden, &c. *ſi a meſme le Parliament auters Acts que fuer' affirme ou alter icy poent eſtre enactes per authority del Parliament la. Le quel eſt explaine per le dit darrein Act in ceux parols,* for paſſing and agreeing upon ſuch Acts, and no others, as ſhall be ſo returned under the Great Seal of England.

5. *Grand doubt fuit conceive ſur les ditz parols* (that done a Parliament to be holden) *le quel le Lieutenant & Councell d' Ireland apres le Parliament commence la, &* pendente Parliamento *poient ſur debate & conference la, tranſmitt aſcun auters conſiderations, cauſes, tenors, proviſions, & ordinances come ſembles a eux bone deſtre enact' a meſme le Parliament deins le Realme d' Ireland, le quel eſt explaine per le dit Act de* 3 & 4 Ph. & Mar. *in expreſſe parols, que ils poient, &c.*

Nota Lecteur lorder del proceading & ſommons del Parliament in Ireland. Primerment le Lieutenant & Councell la doient certefier deſouth le Grand Seale d' Ireland le cauſes & conſiderations de toutz tielz Acts come ſemble a eux bone a paſſer en Parliament, iſſint que le original covient a commencer la. 2 Ils covient deſtre affirme ou alter & change & retorne deſouth le Grand Seale Dangliterre. 3 Licence deſouth le Grand Seale a ſumoner & tener un Parliament. 4 A tranſmitter Billes pendente Parliamento *come appiert devant. Et fuit auxi reſolve una voce. 1. Que les cauſes, conſiderations, & Bi'es tranſmitte icy deſouth le Grand Seale d' Ireland doient deſtre cuſtodie & preſerve icy in le Chancery d' Anglitterre, & ne remaunde. 2. Silz ſoient affirme, ilz doient deſtre tranſcript deſouth le Grand Seale & retorne in Ireland, & tout ceo que paſſe le Grand Seale doiet deſtre inrolle icy e in le Chancerye. 3. Si les Acts tranſmitt icy ſoient in aſcun part alter ou change icy, lacts iſſint alter & change doient come en un continent deſtre retorne deſouth le Grand Seale Dangliterre a ceux in Ireland, tout quel doit deſtre inrolle icy in le Chancerye Dangliterre. Mes le tranſcript deſouth le Seale d' Ireland que le remaine in le Chancerye icy, ne ſerra amend, mes l' amendment ſerra deſouth le Grand Seale Dangliterre come eſt avandit. 4. Les amendments ou alterations icy ſerr' come eſt avandit retourne in Ireland ſans aſcun ſignification ou certificat dallowance de ceux per ceux de Ireland, car ſicome les Acts movent originalment de Ireland, iſſints les amendments ou alterations movont icy in Angliterre. 5. Touts les Bils que ſont tranſmitt icy de Ireland ſont ove le petition del Deputye & Councell le Roy touts enſemble deſouth un Grand Seal d' Ireland. 6. Touts les Bills que ſont affirme ou alter icy ſoient retourne enſemble deſouth un Grand Seale Dangliterre.*

And thus much concerning the Parliaments of Ireland.

The

The caſe of the Earl of Shrewsbury upon the ſtatute of 28 *H.* 8. of Abſentees.

28 *Martii Anno domini* 1612.

Per force de certain Letters Patents de 28 *Martii* 1612. *del ſeigniours del Privy Councell direct al Sir Humfrye Winche, Sir James Lea, Sir Anthony Sentleger, & James Fullerton, ilz certifiont aux ſeigniors le claim de Guilbert Countee de Salop aux dignities del Countee de Waterford & Barony de Dongarvan in Ireland come enſuiſt. Le Roy* H. 6. *per ſes Letters Patents* Anno 24 *de ſon reign granta a ſon treſchier coſin John Countee de Shrewsbury in conſideration de ſes approved & foyall ſervices in le City & County de Waterford in Ireland,* pro eo quoque quod per eundē conſanguineum noſtrum predicta terra noſtra Hibernia in partibus illis contra hujuſmodi inimicorum & rebellium noſtrorum inſultus potentius defenderetur, ipſum in Comitem Waterford una cum ſtilo & titulo ac nomine & honore eidem debitis ordinamus, præficimus & creamus Habendum, *al dit Countee, & a les heires males de ſon corps. Et ouſtre per meſme les Letters Patents granta les Caſtles, ſeigniories, honors, terres & barony de Dungarvan al dit John Countee & a les heires males de ſon corps, les premiſſes deſtre tenus del Roy & ſes heires per homage & fealty, & le ſervice deſtre ſeneſchal a ſon Majeſty in le Realm d' Ireland. Puis al Parliament (communement appelle des Abſentees) tenus al Dublyn in Ireland,* 1 Maii, An. 28 H. 8. *fuit enact (per reaſon del long abſence del George Countee de Salop hors de meſme le Realm) que le Roy, ſes heirs & aſſignes avera & enjoyera in droit de ſon Corone d' Angliterre touts honors, mannors, Caſtles, ſeigniories, franchiſes, hundreds, liberties, County Palatines, Jurisdictions, annuities, fees des Chivaler, terres, tenements, &c. & touts & ſingular poſſeſſions, hereditaments, & touts auters profits, cibien Spirituall come Temporall, quecunque queux ledit George Countee de Shrewsbury, & Waterford, ou aſcun auter perſon ou perſons a ſon uſe avoient, &c. Le Roy* H. 8. *per ſes Letters Patents,* Anno 29 *de ſon reign recitant le dit ſtatute de Abſentees,* Nos præmiſſa conſiderantes & nolentes ſtatum, honorem, & dignitatem prædicti Comitis diminuere, ſed amplius augere, ex certa ſcientia, & mero motu, &c. *Granta al dit Countee & ſes heirs l' Abby de Rufford ove les terres a ceo perteynant in le County de Nottingham, & le ſeigniory de Rotheram in le County de York, les Abbeys de Cheſterfield, Shirebroke & Gloſſopdale in le County de Derby ove divers auters terres & tenements de grand value deſtre tenus in Capite, & les queſtions fuer'.*

1. *Le quel per le longe abſence del Countee de Salop hors de Ireland per que les Roys & ſubjects wanted lour defence & aſſiſtance la, enconter le expreſſe conſideration del creation, le title del honor eſt perdue ou forfeit, le dit Countee eſteant Pier del ambideux Realms, & reſiding icy.*

2. *Le quel per le dit ſtatute des Abſentees,* Anno 28 H. 8. *le title del dignity del Countee de Waterford ſoit priſe del dit Countee de Shrewsbury cibien come les mannors, terres, tenements & auters hereditaments in meſme Lact ſpecifie.*

Et puis per auters Letters des ſeignioures del Councell, 27 Septemb. 1612. *les deux Chief Juſtices & Chief Baron fuere require a conſider del dit caſe (que fuit encloſe deins lour Letters) & a certifie lour opinions de ceo.*

Quel caſe fuit argue per Councell erudite del dit County devant les dit Chief Juſtices & Chief Baron, ſur que ilz preſteront adviſement (apres que

ilz

ilz ont divers foitz lye le Preamble & tout le dit Act de 28 H. 8.) *jeſque a Terme de* St. Mich. Anno decimo Jacobi Regis, *& donques fuit unement reſolve per eux come enſuiſt.*

Quant al primer fuit reſolve, que intant que nappiert que aſcun defence fuit requiſite, & que le conſideration executory neſt trove per office deſtre infreint, ne jndgement done in Scire Fac', a ceſt cauſe que le dit Countee de Salop, ceo nient obſtant, remain Countee de Waterford.

Quant al 2 fuit reſolve, que le dit Act de 28 H. 8. *des Abſentees nad tolle ſolement les poſſeſsions, que fuer' done a luy al temps de ſon creation, mes auxi le dignity meſme, Car coment que un poet aver dignity ſauns aſcuns poſſeſsions, uncore ceo ſerroit pleine de inconvenience, & a ceſt cauſe le dit Act de* 28 H. 8. (*come touts autres Acts doient eſtre*) *ſerra expound douſter tout inconvenience, & pur ceo per les generall parols del Act,* (ſc. *des honors & hereditaments,*) *le dignity meſme ove les terres dones ur maintenance de ceo ſont done al Roy, & le dignity extinct in le Corone.*

Et eſt digne de obſervation le cauſe de degradation de George Nevill Duke de Bedford, que fuit fait per force dun Act de Parliament, 16 Ianuarii, Anno 17 E. 4. *quel Act* reciting the erection and making the ſaid *George* Duke, *expreſſe le cauſe de ſon degradation in ceux parols.*

Rot. Parl. tent. apud Weſtm' 16 Jan. Anno Regis E. 4. 17. Degradatio Geo. Ducis Bedford.

And for ſo much as it is openly known, that the ſaid George hath not, nor by inheritance may have any livelihood to ſupport the ſaid name, eſtate, and dignity, or any name of Eſtate, as oftentimes it is ſeen, that when any Lord is called to high eſtate, and have not livelihood convenient to ſupport the ſame dignity, it inducеth great poverty and indigence, and cauſeth oftentimes great Extortion, Imbracery, and Maintenance to be had, to the great trouble of all ſuch Countries where ſuch Eſtate ſhall happen to be inhabited. Wherefore the King by the advice of his Lords Spiritual and Temporal, and the Commons in this preſent Parliament aſſembled, and by the Authority of the ſame, ordaineth, eſtabliſheth and enacteth, that from henceforth the ſame erection and making of the ſame Duke, and all the names of dignity to the ſaid George or to John Nevil his father be from henceforth void and of none effect, &c.

In quel Act 3 choſes fuer' obſerve, 1. *Que coment le dit Duke navoiet aſcun poſſeſſions a ſupporter ſon dignity, uncore ſon dignity ne poet eſtre tolle de luy ſans Act de Parliament.* 2. *Les inconveniences appiert ou grand eſtate ou dignity neſt pas accompany ove livelihood.* 3. *Ceo eſt bone cauſe a toller le dignity per Parliament, Et pur ceo le dit Act de* 28 H. 8. *ſerra expound ſelonque le generalty del letter à toller tiel inconvenience, Et coment que le dit Countee de Salop ſoit non ſolement de grand honor & vertue, mes auxi des grand poſſeſſions in Engliterre, uncore ne fuit lentention del Act a continuer luy Countee in Ireland quant ſes poſſeſſions in Ireland fuer' tolle de luy, mes que le Roy a ſon pleaſure puit conferre cibien le dignity, come les poſſeſsions a aſcun autre pur le defence de meſme le Realm. Et les dits Letters Patents de* Anno 29 H. 8. *nad parols a reſtorer le dignity que Lact de Parliament ad tolle, auxi ne fuit lentent del Roy* diminuere ſtatum, honorem & dignitatem ipſius Comitis, ſed augere, *ceux ſont deſtre entendes des poſſeſsions pur maintenance de ſon dignity, car tant appiert per ceſt parol* [augere] *car il increaſe per meſme les Letters Patents ove exceeding grand bounty le revenues del dit Countee de Salop en Angliterre, quel le roy penſe fuit un increaſe de ſon ſtate, honor & dignity, iſſint ſon dignity in Angliterre fuit increaſe ove large poſſeſsions in Angliterre in lieu de tout ceo que fuit tolle de luy per Lact de* 28 H. 8. *Et ou fuit object que les generall parols* [*des*

honors

nors & hereditaments] *ſont explain & qualifie per les dits relative ſubſequent* (*queux le dit* George *Countee de Salop ou aſcun auter a ſon ceps,*) *& pur ceo ne ſerra entende daſcun honor ou hereditament mes dont auters poient eſtoier ſeiſie al uſe, & ceo nul poet del dit dignity, & pur ceo le dit Act extendera a ceo. Mes ceo eſt deſtre priſe reddendo ſingula ſingulis, & les parols queux ledit* George *Countee avoit ſont ſufficient a paſſer le dignity, & eve ceo accord le opinion de touts les Juſtices Dengliterre in* Nevils caſe, *ſur antiel parols in le ſtatute* 26 H. 8. *in le 7 part de mes Reports*, fo. 33. & 37.

Rot. Par. 3 R. 2. nu. 42.

There is an Act made in 3 H. 2. worthy here of remembrance, which never was yet printed. It is enacted, that all manner of perſons whatſoever, who have any lands or tenements, offices or other living Eccleſiaſticall or Temporall within Ireland, ſhall reſide or dwell upon the ſame. And that all ſuch as have there any Caſtles or other Forts, ſhall fortifie the ſame and furniſh it with men able for defence, and thereupon alſo dwell. And if they at any time depart, then during their abſence to appoint ſome able to ſupply his room, otherwiſe the Governor to diſpoſe the halfe of their Living to ſuch defence. See the Act at large, neceſſary to be put in execution in theſe dayes.

Rot. Par. 21 E. 1. Rot. 3. Hibernia.

Dominus Rex vult & præcipit quòd de cætero ſingulis annis ſemel in anno compotus Hiberniæ, &c. per Theſaur' Hiberniæ reddatur ad Scaccarium Angliæ, & ibidem audiatur per Theſaur' & Barones ſuos. A neceſſary law, and much for the benefit of the King to be obſerved.

Trin. 13 E. 1. Coram rege Rot. 38. in breve de errore, Hibernia. Apud Weſtm'. 22 E. 1. Rot. 5. in breve de errore Int' William de Veſey & P. filium Thomæ, & Rot. Parl. 23 E. 1. 5 E. 2. error 89. 15 E. 3. ibid. 72. 34 Aſſ. p. 7. Reg. F. N. B. fo. 24. c. 11 H. 8. Kelw. 202. 15 E. 3. Record 38.

A long Record touching the cuſtody of the body and lands of heirs within age, wherein theſe words are contained. Et cum una & eadem lex eſſe debeat tam in regno Angliæ quam Hiberniæ. Like writs of Error of judgments given in the Kings Bench in Ireland, Mich. 32 E. 1. Coram rege. Theobald Verdons caſe, Breve de errore ſuper bre de errore Rot. 76. Paſch. 30 E. 1. Coram Rege Rot. 50. in breve de errore, &c. William de la Rivers caſe, Et Tr. 33 E. 1. Rot. 36. [a] Concordatum eſt per omnes de Concilio regis, Epiſcopis & aliis in Hibernia unanimiter, quod conſuetudo uſitata in Hibernia de bonis teſtatorum talis eſt, quod ubi, &c.

[b] Priſage vinorum in Hibernia, and the manner of the taking of the ſame.

At a Synod holden in Ireland by St. Patrick their Apoſtle, it was unanimouſly agreed that Iriſh Prieſts ſhould have wives.

[c] *Tres Petitiones porrecta Regi contra Eliam de Aſhburnham militem Juſticiar' domini regis in Hibernia de diverſis malefactis, &c. per ipſum perpetratis, qui dicit quod non debet tractari, niſi in Hibernia, & ibidem terminari: & quod oportet ipſum dominum regem informari per indictamentum 12 Jur' vel per Appellum formatum & Attachiament' ad ſectam partis ſecundum legem & conſuetudinem regni regis Angliæ hactenus uſitat'. Curia vult inde adviſari, & interim manucapitur. Poſtea dominus rex mandavit breve quod caperent manucapt' ad reſpondendum in Hibernia.*

[d] *Admittitur Epiſcopus Exon' pro fine* 200 *Marc' pro contemptu in non admittendo præſentatum regis ad Eccleſiam de Southwell, pro quo contemptu omnia Temporalia ſeiſita fuerunt in manus regis, & tunc temporis ante finem facti' vacavit Archidiaconat' Cornubiæ ratione quod incumbens electus fuit in* [e] *Archiepiſcopum Dublin in Hibernia (temporalibus Epiſcopi Exon' adtunc in manibus regis exiſten') per quod dominus rex recuperavit verſ. Epiſcopum dict' Archidiaconat'.*

Pasch. 28 E. 1. Coram rege Rot. 98. Hibernia.

Tr. 33 E. 1. Coram rege Rot. 124 Hibernia.

Tr. 18 E. 3. Coram Rege Rot. 148. Hibernia. Sir Elias Aſhburnhams caſe.

Paſch. 14 E. 3. Rot. 25. Coram Rege. Cornubia.

Bract. li. 5 f. 195. 7 E. 3. 9. 12 E. 3. 41, 42.

In this Record two concluſions are to be obſerved. 1. Though Ireland (as hath been ſaid) be a diſtinct Kingdome of it ſelf, yet it is governed by one and the ſame law that England is. 2. That when the Archdeacon was by the King preferred to a Biſhoprick, he had the preſentation to the Archdeaconry in reſpect

reſpect of the Temporalities of the Biſhop of Exeter Patron of the Archdeaconry, and not by any[a] prerogative. And ſo it is, if an Incumbent in Ireland be made a Biſhop in England.

If a Biſhop in England be made a[b] Cardinall, the Biſhoprick becomes void, and the King ſhall name the ſucceſſor, becauſe the Biſhoprick is of his Patronage.

[c] See 45 E. 3. 9. upon the repeale of a Ratification of the Incumbent, a Procedendo out of the Chancery here to the Juſtices in Ireland to proceed in the Quare Impedit brought by the King.

I finde an ancient Record touching Ireland neceſſary to be explained, in theſe words.

[d] *Rex Theſaurario Hiberniæ, Salutem. Cum Edwardus primogenitus noſter terram Hiberniæ habeat & teneat de dono noſtro cum omnibus pertinentiis ſuis adeo liberè & quietè ſicut eam in manu noſtra teneremus, per quod chariſſima filia noſtra Alianora conſors dicti filii noſtri Aurum ſuum tam de finibus quam ſponte oblatis in terra Hiberniæ habere debet, ſicut chariſſima conſors noſtra Alianora Regina Angliæ Aurum ſuum habet de eiſdem in regno noſtro Angliæ: Vobis mandamus, &c. quatenus præfatæ conſorti filii noſtri prædicti Aurum prædictum de finibus & ſponte oblatis, & etiam de quibuſcunque aliis finibus prædictis habere facias in forma prædicta. Et hoc &c. In cujus &c. Teſte Rege 29. die Februarii, Anno 52 H. 3.*

By this Record firſt it appeareth, that, as the law was taken at that day, by gift of King H. 3. his eldeſt ſonne Prince Edward was Lord of the Dominion and Lordſhip of Ireland. Secondly, that albeit the wife of Prince Edward was not Queene in name, but had the effect of it, therefore ſhe ſhould have a duty called Aurum Reginæ, as well as the Queene of England, being but Lady in Ireland. [e] For albeit the Kings of Ireland were (untill the Statute of 33 H. 8.) ſtiled by the name of Lord of Ireland, yet was he ſupremus, and abſolutè Dominus, and had ropall dominion and authority, and that his Conſort was in rei veritate Regina, or elſe ſhe could not have had Aurum Reginæ.

[f] Albeit this Ropall Dominion and Land of Ireland was of ancient time permitted to be granted de facto to the Kings ſonnes before mentioned, yet by the Law the King by his Letters Patents could not grant ſo Ropall a member of his Imperiall ſtile to any, no more then he could do of the Kingdome of England. And that doth well appeare by this, that when King R. 2. by his Letters Patents created Robert de Vere Earle of Lincolne, and Marqueſſe of Dublin to be Duke of Ireland, he granted to him for life * totam teram & Dominium Hiberniæ, & Inſulas eidem terræ adjacentes, ac omnia Caſtra, Comitatus, Burgos, Villas, * Portus Maris, &c. una cum homagiis, * obedientiis, vaſſalis, ſervicijs, & recognitionibus Prælatorum, Comitum, Baronum, &c. * advocationibus & patronatibus Eccleſiarum Metropoliticarum & Cathedralium Abbatiarum, &c. * conſtituere Cancellar', Theſaurar', Juſticiar', &c. cum regaliis, regalitatibus, libertatibus, &c. & omnibus aliis * quæ ad regaliam noſtram pertinent, * cum mero & mixto Imperio, adeo plenè, integrè, & perfectè, ſicut nos ea tenuimus & habuimus, tenuerunt & habuerunt progenitorum noſtrorum aliqui ullis unquam temporibus retroactis. Tenendum per * Homagium ligeum tantum.

[g] The ſaid Letters Patents were authorized by Parliament, Aſſenſu Prælatorũ, Ducum, & aliorum Proc erũ, & Communitatis noſtræ Angliæ in Parliamento, &c. albeit it was contra legem & conſuetudinem Parliamenti, as before it appeareth, pa. 13, 14. to aſſent to any thing to the diſherſion of the King and his Crown. Sed novus iſte inſolitus & umbratilis honor cito evanuit.

, Rot. Par. 13 R. 2. nu. 21. the King by authority of Parliament gave the title of Duke of Aquitaine to his Uncle John of Gaunt, Duke of Lancaſter, and it was

[a] This is apparent by many authorities. Trin. 32 E. 1. coram Rege, Rot. 75. John de Bonhams caſe. 17 E. 3 fo. 40. 21 E. 3. 40 41 E. 3. 5. 46 E. 3. 32. 6 Eliz. Dier. 228. b. pl. 48. reſolve.

[b] Rot. pat. 18 H. 6 part 2. m. 24. A Biſhop made a Cardinal.

[c] 45 E. 3. fol. 9.

[d] Rot. pat. Anno 52 H. 3. m. 26. Aurum Reginæ.

The like grant was made of the Land of Ireland by H. 2. to his ſon John.

[e] 33 H. 8. cap. 1. And ſo it appeareth by this Act that the King and his progenitors had before this Act Kingly juriſdiction and Royall authority.

[f] See before pag. 13, 14. the grant of King John to the Pope declared to be void by the Parliament in 40 E. 3. Theſe thus (*) marked cannot be granted by Letters Patents.

* Per Hom. ligeũ for tenant for life could not do other homage.

[g] Rot. pat. 9 R. 2. m. 2. & Rot. par. 9 R. 2. nu. 9. & 10. m. 3.

by consent of Parliament, and could not be granted by Letters Patents, because it was one of the titles and stiles of his Royall Crowne. And this also did first begin and end in him.

Aurum Reginæ. But now it is necessary to be knowne what this duty of Aurum Reginæ is. Wherein three things are to be considered, First, what authority and warrant in Law there is for this duty. Secondly, what it is. Thirdly, what is due thereby. First, in Lib. Rub. in Scaccario fo. 46. de Auro Reginæ, where it is said, that it is to be taken de his qui sponte se obligant Regi, &c. This present Record of 52 H. 3. Vet. Mag. Carta 2. part. fo. 65. Vid. 10 H. 3. Stat. de Roteland to the same effect.

Hil. 4. E. 1. in Scac. ex parte Rem. Reg. Hil. 12 E. 3. ibid. Rot. 3. A Record in the Exchequer Termino Hil. Anno 4 E. 1. Another there, Hil. 12 E. 3. Rot. 3. ex parte Rem. Regis, and divers other Records in the reignes of R. 2. H. 4. &c. untill the reigne of H. 7.

In Acts of Parliament, *viz.* 15 E. 3 cap. 6. 31 E. 3. cap. 13.

Rot. claus. 12 E. 3. part. 1. m. 21. 2. In divers of these Records it appeareth that the Queen should have de sponte oblatis * pro centum marcis argenti unâ marcâ auri solvend per ipsum qui sponte se obligat. And Pasch. 4. Jacobi Regis the King did require the two Chiefe Justices and Chiefe Baron to certifie him what belonged to the Queene for this duty at this day. And after many conferences, and hearing of Counsell learned on both sides, and view of Records, at last it was resolved by them all, and so did Popham Chiefe Justice report to the King, that the duty belonged to the Queene with these foure limitations. 1. It must be sponte from the subject, and at his pleasure whether he will give it or no, and no right in the Crowne. And therefore fines for offences, for alienations, or the like, are no part of this duty. 2. It must be freely, without any consideration of any grant, sale, or lease

Rot. Parl 7 R. 2. nu. 61. of any thing wherein the King hath any revenue, estate, or interest. And therefore Sales, Leases, Grants of Lands, Tenements, Wardships, or the like, are out of the same, for there is quid pro quo. 3. It must be sponte super aliqua consideratione, &c. For example, if the subject sponte offer to the King for a licence in Mortmaine, or to create a Manor of himselfe, or to have a Faire, Market, or to make a Parke, or the like, where the King diminisheth no part of his revenue, state, or interest, there Aurum Reginæ is due to the Queen. 4. Of Subsidies, Fifteenes, or any other gratuity of the meere grace or benevolence of the subject, there is nothing due to the Queene, and so it was resolved, Hil. 4 E. 1. &c. ubi supra. And so much upon this occasion de Auro Reginæ.

Certaine Irish words necessary to be explained.

[a] A Tainist was successor apparent under the chiefe Lord or Captaine of every severall Country, and was eligible by the Country.

[b] Brehon. The Irish called their Judges Brehons, and thereupon the Irish Law is called the Brehon Law.

[c] At a Parliament holden in Ireland by Howel Duke of Clarence, Lieutenant there, Anno 40 E. 3. at Kilkenny, and therefore called the Statute of Kilkenny, the Brehon Law is no Law, but a lewd custome crept in of later times, and never was the Law of the ancient Britaines from whom they are descended.

[d] uttings. Under that name they comprehend Tallages and Impositions.

[e] Cosheries are prehendinations, when the chief Lord and his retinue, &c. came to his Tenants house, and fed upon their provisions till all were spent.

Termondland are the Glebe of the Church.

Erick signifieth a fine for an offence.

Gallowglasses, Equites Triarii qui securibus utuntur acutissimis.

Kernes sunt pedites qui jaculis utuntur.

The Prorex there in former times hath been called Custos, Warden, Lieutenant, Chiefe Justice, Deputy of Ireland.

These expositions we have added for the better instruction of him who will read the Irish Lawes.

[a] Thanea ud Britannos pro viro no bili, nuc Regis ministro.
[b] Brehons Bellagines.
[c] Parliament 40 E. 3. at Kilkenny.
[d] Cuttings
[e] Cotherie.
Termondland.
Erick.
Gallo Iasses.
Kernes.

Rex

Rex, &c. Johanni Mareſcallo dedimus & conceſsimus pro Homagio & ſervicio ſuo Mareſcalſiam noſtram totius Hiberniæ cum omnibus pertinentiis, &c. Habendum ſibi & hæredibus ſuis de nobis & hæredibus noſtris.

Rot pat. 9. Johannis Regis Johanni Mareſcallo, of whom the Lord Morly is deſcended.

See the Regiſter, that if an Archbiſhoprick or Biſhoprick in Ireland be void, that the Chapter ſhall ſue to the King in England to goe to election, and after election made they ought upon certificate thereof made to the King to obtaine his Royall Aſſent to this election, and thereupon a Writ ſhall be directed out of the Chancery here, to the Chiefe Juſtice of Ireland, or his Lieutenant, rehearſing all this matter, and commanding him to take fealty of the Biſhop, and to reſtore him to his Temporalties. But now the courſe is in Ireland to make ſuch Writs there in the name of the King. But the King names the Archbiſhops and Biſhops there, as he doth in England; and then the Chapter chooſe him whom the King names to them, and thereupon the Writs are made of courſe.

Regiſt. 294.

F.N.B. 169. l. o.

And the reaſon of this change is worthy to be knowne: for the Charter of King John for election of Biſhops, &c. extended only to the Biſhops, &c. of England. [a] **But after that the whole Dominion of Ireland (as well concerning the Church as the Commonwealth) was eſtabliſhed to be governed by one Law with the Kingdome of England, as is aboveſaid, then the courſe of the Regiſter was changed, and the ſame courſe taken there, as it is in England.**

[a] Carta Johannis Regis 15. Jan. apud novum London Ann. 18. Biſhops before were donative by the King. 10 E. 3. 1. b. per Perning. 17 E. 3. 40. per Stone &c.

And whereas heretofore ſome, not without ſcandall, have divided this Kingdome into the Engliſh Pale, and the wilde Iriſh, [b] **let oblivion bury it, or ſilence cover it, for now all are reduced to obedience and civill behaviour. So as a man may juſtly ſay of them as of the old Britains,** Sunt in bello fortes, & in pace fideles. **And for that ſome have given out that the Crowne of England had this Country of Ireland of the donation of the Pope, we will ingenuouſly manifeſt the truth therein by the Records and writings themſelves at large.**

[b] Auferat oblivio, ſi poteſt; ſi non, utcunque ſilentium tegat.

Altitonantis Dei largiflua clementia, qui eſt Rex Regum, & Dominus dominantium, ego Edgarus Angloram Baſileus, omniúmque rerum Inſularum Oceani quæ britanniam circumjacent, cunctarúmque Nationum quæ infra eam includuntur Imperator & dominus, gratias ago ipſi Deo Omnipotenti Regi meo, qui meum imperium ſic ampliavit & exaltavit ſuper regnum patrum meorum. Qui licet Monarchiam totius Angliæ adepti ſunt à tempore Athelſtani, qui primus Regum Anglorum omnes Nationes quæ Britanniam incolunt ſibi armis ſubegit, nullus tamen eorum ultra fines imperium ſuum dilatare aggreſſus eſt. Mihi tamen conceſſit propitia Divinitas cum Anglorum imperio omnia regna Inſularum Oceani cum ſuis ferocibiſſimis Regibus uſque Norvegiam maximámque partem Hiberniæ, cum ſua nobiliſſima Civitate de Dublina Anglorum regno ſubjugare, quos etiam omnes meis imperiis colla ſubdere, Dei favente gratia, coegi. Quapropter & ego Chriſti gloriam & laudem in regno meo exaltare, & ejus ſervitium amplificare decretus diſpoſui. Et per meos fideles fautores, Dunſtanum, viz. Archiepiſcopum Ayelwolanum ac Oſwaldum Archiepiſcopos, quos mihi patres ſpirituales & conſiliatores elegi, magna ex parte diſpoſui, &c. Facta ſunt hæc Anno domini 964. Indictione 8. Regni vero Edgari Anglorum Regis 6. in regia urbe quæ ab incolis Ocleayeceaſtriæ nominatur in natale Domini feſtivitate Sanctorum Innocentium feria 4. &c. ✠ Ego Edgar Baſileus Anglorum, & Imperator Regum gentium, cum conſenſu & Principum & Archiepiſcoporum meorum hanc meam munificentiam ſigno meo corroboravi. ✠ Ego Alfrye Regina conſenſi & ſigno Crucis confirmavi. Ego Dunſtan Archiepiſcopus Dorobor' Eccleſiæ Chriſti conſenſi & ſubſcripſi ✠ Ego Oſticel Archiepiſcopus Eboracenſis Eccleſiæ

The Charter of King Edgar made Ann. Dom. 964. and in the 6. of his reigne.

King Athelſtane reduced England to a Monarchy.

King Edgar conquered the greateſt part of Ireland, with the moſt noble City of Dublin.

Note the piety of this King

Int. leges Edw. Regis & Confeſſoris fo. 137. b. Lamb. Arthurus qui quondam fuit inclytiſſimus Rex Britannorum, &c. ſubjugavit ſibi ſtrenue (inter alia) Hiberniam, &c.

cleſia conſenſi & ſubſcripſi. Ego Alferic Dux. Ego Buthnod Dux. Ego Aridgary Dux ✠

And what Eccleſiaſticall jurisdiction the Archbiſhop of Canterbury had in Ireland of ancient time before it was ſubject to the Crowne of England, you may reade in Camdens Britannia, pag. 735. & 765. as namely in the Conſecration and Confirmation of their Biſhops, by reaſon of his Primacy in Ireland.

Mich. 5 E. 3. coram Rege Rot. 43. Hibernia.

A Juſtice in Ireland conſtituted by Letters Patents under the great Seale of England, cannot be removed from his office but by the King only.

Of the Pentarchy of Ireland.

South. *The Kingdome of Mononia had* 7. *Counties*, viz.
- Kerry.
- Deſmond.
- Corke.
- Waterford.
- Limricke.
- Tipperay,
- *with the County of S^t* Croſſes Tipperay.

East. *Lagenia* 7. viz.
- Kilkenny.
- Caterlough.
- Queenes County.
- Kings County.
- Kildare.
- Waſhford.
- Dublyn.

The middeſt. *Media.* 3.
- East Meth.
- Weſt Meth.
- Longford.

Weſt. *Conacha had* 6. *Counties*, viz.
- Towmond.
- Galloway.
- Mino.
- Slego.
- Le Trim.
- Roſtaman.

North. *Vltonia had* 10. viz.
- Louth.
- Cad.
- Monaghaia.
- Domagh.
- Doun.
- Antrim.
- Colran.
- Tiroen.
- Tirconel, *or* Doneal

Ireland hath 33. Counties, beſides Cities, that are Counties of themſelves.

King H. 2. at a Parliament holden at Orkord, Anno regni ſui 23. created his ſonne John King of Ireland. But the ſucceeding Kings wrote themſelves Domini Hiberniæ, untill the 33. yeare of H. 8. in which yeare he took upon him the name of King of Ireland.

Rot. parl. 3. R. 2. nu. 43. in England. Mines of Gold and Silver. Bract. li. 2. fo. 222. Fleta lib. 4. fo. 119. Fl. Com. in the caſe of Mines. Coynage at Dublin. * Rot. pat. 5 H. 6. 1. pars.

It was enacted by Authority of Parliament, that every man during ſix yeares might dig in his owne proper ſoyle in Ireland Gold or Silver, &c. yeelding to the King the ninth part thereof, and that they make Plate or Coyne thereof at the Kings Coynage in Dublin, paying the fees: and that none carry thereout any of the ſaid Gold, Silver or Bullion, but into England, without the Kings licence, on paine to loſe the ſame.

* A grant of all Mines of Gold and Silver within England, &c. to the Duke of Bedford Regent of France, &c. rendring to the Church the tenth part: to the King the fifteenth part: to the owner of the ſoyle the twentieth part.

To conclude with ſomewhat which tends to the honour of that Noble Nation. Certaine it is, that whiles the Liberall Sciences in Europe lay in a manner buried in darkneſſe, then did their luſtre ſhine forth moſt clearly here in Ireland; thither did our Engliſh Saxons repayre, as to a Fayre or Market of good

Letters:

Letters: whence of the holy men of thoſe times we often reade in ancient Writers, Amandatus eſt ad diſciplinam in Hiberniam: he was ſent into Ireland to ſtudy there. Camden In Hibernia.

He that is deſirous to reade more Records concerning this Kingdome of Ireland, he may reade theſe Coram Rege in the Kings Bench. Trin. 13 E. 1. Rot. 36. 38. Hibernia. Mich. 17 E. 1. Rot. 31. 38. Hibernia. Hil. 19 E. 1. Rot. 68. Hibernia. Paſch. 19 E. 1. Rot. 69. Hibernia. Trin. 20 E. 1. Rot. 40. Paſch. 34 E. 1. Rot. 104. Mich. 5 E. 3. Rot. 40. & 46. Mich. 6 E. 3. Rot. 55. Hibernia.

Of the precedency of the great Officers, Nobility, and others of this Realme.

For of the precedency of the King himſelf & of other Kings and ſupreme Princes, I take not upon me to write, but referre you to learned *Camden, Lib. Annal. Anno Domini* 1600. 42. Eliz. pag.

At the Common law, the King by his Prerogative royall might give ſuch honour, reputation and placing to his Counſellors and other his ſubjects as ſhould be ſeeming to his wiſedome, which Prerogative was ſo declared by Act of Parliament.

Præcedere eſt præeundo ince re. Qui præcellit præcedere debet. Moſt ancient is moſt honourable Ariſtot. 1 Metaph. cap. 3. 31 H. 8. cap. 10. in the Preamble.

[a] By this Prerogative, Henrico Beauchamp conceſſit Rex Henricus Sextus, ut primus & præcipuus eſſet Angliæ Comes, & hoc titulo uteretur; Henricus Prænobilis totius Angliæ & Comes Warwici, Vectæ Inſulæ regulum dixit; poſtéaque Ducem Warwici creavit, & conceſſit, ut haberet ſedem in Parliamentis, & alibi proximam Duci Norf. & ante Ducem Buckinghamiæ.

[a] Rot. Pat. 23 H. 6. Vid. Rot. Pat. 28 H. 6. 2 parte m. 23. Precedency granted to R. Earl of Warw.

The ſame King created Edmond of Hadham to be Earl of Richmond, and granted him precedency before all other Earls. He alſo created Jaſper of Hatfield Earl of Pembroke, and gave him precedency before all other Earls next to his brother the ſaid Edmond Earl of Richmond. But hereof theſe examples ſhall ſuffice.

King H. 8. though ſtanding as much upon his Prerogative as any of his Progenitors, yet finding how vexatious it was to himſelf, and how diſtaſtfull to his ancient Nobility to have new raiſed degrees to have precedency of them, and finding that this kind of controverſy for precedency was of that nature, that it had many partakers, ſpent long time, and hindred the arduous, urgent and weighty affairs of the Parliament, was content to bind and limit his Prerogative by Act of Parliament concerning the precedency of his great Officers, and of his Nobility. And firſt for the Lords Spirituall (who ſit in Parliament on the Kings right hand) amongſt themſelves. 31 H. 8 cap. 10.

1. The Archbiſhop of Canterbury. 2. The Archbiſhop of York on the ſame forme. 3. The Biſhop of London. 4 The Biſhop of Dureſme. 5. The Biſhop of Winchester, and then all the other Biſhops of both Provinces ſhall ſit and be placed after their Antienties, as before this Act was accuſtomed. But having regard to the Lords and noble Peers of the Realm, both the Archbiſhops have place above all the great Officers and Nobility in Parliament, Councell and Commiſſions, ſaving in the Star-chamber, the Lord Chancelor or Lord Keeper hath the precedency of them. But the other Biſhops have place above all the Barons of the Realm, becauſe they hold their Biſhopricks of the King per Baroniam, but they give place to Viſcounts, Earls, Marqueſſes and Dukes.

Nota, the Lord Steward of England is not here mentioned, becauſe it was intended that when the uſe of him ſhould be neceſſary, he ſhould not endure longer then *bac vice*.

* *i.* the Kings Grandchilde. Note the degrees within that Act.

Concerning the great Officers of the Realm. 1. The Lord Chancelor or Lord Keeper of the Great Seal. 2. The Lord Treaſurer. 3. The Lord Preſident of the Kings Councell. 4. The Lord Priby Seal, being of the degree of Barons of Parliament, or above, ſhall ſit and be placed in Parliament on the higher part of the foſm above all Dukes, except onely ſuch as ſhall happen to be the Kings Son, the Kings Brother, the * Kings Nephew, or the Kings Brothers or Sifters Sonne. See an Act made in 28 H. 8. cap. 18. making it treaſon for marrying, &c. with any of the blood ropall within certain degrees: but it is repealed. 5. The Great Chamberlaine of England. 6. The Conſtable. 7. The Marſhall. 8. The Lord Admirall. 9. The Lord Steward of the Kings houſe. 10. The Kings Chamberlain ſhall ſit and be placed after the Lord Priby Seal in manner and foſme following, viz. every of them ſhall ſit and be placed above all other Perſonages being of the ſame ſtate and degree: as if he be a Baron, above all Barons: if a Viſcount, above all Viſcounts: if an Earl, above all Earls, &c. 11. The Kings principall Secretary being a Baron of the Parliament ſhall ſit above all Barons not having any of the offices aforeſaid. But if he be a Viſcount, an Earl, or any other higher degree, he ſhall not take the place of any Viſcount, Earl, or higher degree, as it was reſolved in the caſe of Robert Cecil, Earl of Salisbury. And if the Secretary be a Biſhop, he ſhall take the place of all other Biſhops not having any of the offices aforeſaid, but not above the Archbiſhops.

The gen. rall clauſe.

All other Dukes not before mentioned, Marqueſſes, Earls, Viſcounts and Barons, not having any of the offices aforeſaid, ſhall all ſit and be placed after their Ancientie, as hath been accuſtomed.

¶ All other Dukes, &c. If the King ſhould create a Duke to the eſtate of Archduke, yet by force of theſe words he ſhall not take place of any Duke that was his Ancient, Et ſic de ſimilibus: otherwiſe this ſtatute might be made of no force; and an Archduke is ſome other Duke.

If any perſon being Lord Chancelor, Lord Keeper, Lord Treaſurer, Lord Preſident, Lord Priby Seal, or Chief Secretary, ſhall be under the degree of a Baron of Parliament, they ſhall in Parliaments ſit in the uppermoſt part of the Sacks in the middeſt of the Parliament Chamber, &c. But in the Starchamber, and all other Aſſemblies and conferences of Councell, they ſhall ſit and be placed as is above rehearſed; and in * no other place. Laſtly, the Lord Chancelor, Lord Keeper, Lord Treaſurer, Lord Preſident, Lord Priby Seal, being Lords of Parliament: The great Chamberlain, the Conſtable, the Marſhall, the Lord Admirall, the Lord Steward, the Kings Chamberlain, and the Kings Chief Secretary ſhall ſit and be placed in ſuch order and faſhion as is above rehearſed, and not in any other place, by Authority of this Parliament. Vid. Statut. de 10 R. 2. cap. 1.

* The words negative were added to avoid all ſcruple, that the order for precedency ſet down in this Parliament ſhould not be altered by any *non obſtante*.

[a] Rot. Parl. Anno 3 H. 6. in principio, & nu. 10.

[b] Rot. Par. 27 H. 6. nu. 18. Vide Rot. Parl. 11 H. 6. m. 9. nu. 32, 33, 34, 35, between the Earl of Arundell and Moubrey Earl of Norf. Rot. Par. 3 H. 6. in principio cited in the Earl Marſhals caſe.

[c] Hol. Chron. pa. 620. 10. Hall 143. &c. Anno 20 H. 6.

[d] Rot. Par. 6 H. 6. nu. 12, 13, 24.

[a] He that is deſirous to underſtand the true Rules of Precedency of the Nobles of this Realm in the High Court of Parliament, &c. let him reade the great caſe between John Earl Marſhall, and Richard Earl of Warwick, in Parliament, and the affirmations, anſwers, and replications on both parts exceeding long, but full of notable rules, reaſons, and preſidents concerning Precedency, both in reſpect of the Blood-Ropall, and otherwiſe: together with the Lines and Pedegrees, Seats, and Places of many Noble men very delightfull to be read.

[b] Another between William Earl of Arundel, and Thomas Earl of Devon: wherein you ſhall reade notable matter concerning the Caſtle and Honour of Arundell precedently adjudged by the Lords in Parliament in the reign of H. 4. between the Earl of Arundell and the Earl of Kent.

[c] If a Biſhop of this Realm be made a Cardinall, he ſhall not take any place of precedency in Parliament as Cardinall, but take his place in right of his Biſhopprick which he holdeth of the King per Baroniam, in reſpect whereof he ſitteth in Parliament.

[d] If a Duke or Earl, &c. be made Protector of the Realm in Parliament, he ſhall

shall have no other place but as a Duke or Earl, &c. Hereby you may perceive how necessary it was to set down by authority of Parliament in certainty the place & precedency that great Officers should have in Parliament, who sit not there in right of their Offices, but of their Nobility: And the names of dignities of the Nobility are parcell of their names, and so ought to be named in the Kings Writs: but the Offices of Chancelor, Treasurer, and other Offices are not parcell of their names and therefore in the Kings Writs need not to be so named.

It is also enacted by Authority of the said Act of 31 H. 8. that in all trials of [b] Treasons by the Peers of this Realm, the said great Officers of this Land shall sit and be placed according to their Offices, above all other the Peers, as is aforesaid.

We have perused the List of the names of the Lords of Parliament sitting in Parliament both of ancient and later time, wherein we can gather no certainty for precedency.

Thus far for avoyding of contention about precedency in Parliaments, Star-Chamber, and all other Assemblies and Conferences of councell, and upon trials by the Peers of the Realme was necessary.

Now he that desireth to know the places and precedency of the Nobility and Subjects of the Realm, as well men as women, and of their children: we for avoiding of tediousnesse will refer them to a Record of great authority in the reign of H. 7. (for we will not touch [c] Bartb. Cassaneus or any other sort in Author) [d] intituled Series ordinum omnium procerum, magnatum, & nobilium, & aliorum quorumcunque infra hoc regnum tam virorum quam foeminarum, posita & distincta per nobilissimum Jasparum Ducem Bedford & alios nobiles appunctuatione Domini Regis Henrici septimi: (but this Record dealeth not with the places of any of the great Officers) [e] whereunto we will refer you: wherein you shall see what places both the Sons, * Wives, and Daughters, of Lords of Parliament, as Dukes, Marquesses, Earls, Viscounts, and Barons shall have, and of Baronets, Knights, Esquires, and Gentlemen, and of their Wives and Children shall have.

[f] If any question be moved in Parliament for priviledge or precedency of any Lord of Parliament, it is to be decided by the Lords of Parliament in the house of the Lords, as all priviledges, and other matter concerning the Lords house of Parliament are, as priviledges and other matters concerning the House of Commons are by the House of Commons to be decided.

The determination of the places and precedencies of others doth belong to the Court of the Constable and Marshall, unlesse any question riseth upon the said Act of Parliament of 31 H. 8. for that being part of the Law of the Realme (as all other Statutes be) is to be decided by Judges of the Common Law.

[g] Nobilis est qui generis sui imagines proferre potest. [h] Flavia gens obscura quidem & sine imaginibus.

Tota licet veteres exornent [i] undique Cerae
Atria, nobilitas sola est atque unica virtus.

Major est nobilitas quam virtus: virtus enim sine nobilitate esse potest, nobilitas autem sine virtute esse non potest.

[k] Arma seu insignia gentilitia ex antiquo habuerunt loco imaginum. So as now the best discussing of antiquity of Gentry is per insignia.

——Armaque fixit *Virgil.*
Troia.——

And by the Lawes of England as all the degrees of nobility and honour were derived from the King as the fountaine of honour: * so all the Lands in Eng-

[a] 7 H. 6. fo. 15. Vid. Rot. Parl. 15 E. 3. nu. 7.

[b] This is put for an example, for it extendeth to all trials by Peeres, not only in case of treason, but in case of felony, misprision of treason and felony, and so ever since this Statute hath it beene put in use.

[c] Barth. Cassaneus in Catalogo gloriæ mundi.

[d] Series ordinum tempore H. 7.

[e] Vid. Camden Eliz. pa. 475.

* Which we have added the rather, for that the contention about precedency betweene persons of that sex is ever fiery, furious, and sometime fatall. Vid. the Parliam. Rolls ubi supra.

[f] Vid. Rot. Parl. 31 H. 6. nu. 27. See 3 H. 6. nu. 18. betweene Mowbray Earle of Norf. and Beauchamp Earle of Warwick.

[g] Cicero. Plin. lib. 39. apud majores &c. optime.

[h] Tranquillus in Vesp.

[i] Juvenal. 8. Cerae imagines.

[k] Cotte de Armes, A coat armour, that is, a long coat over armour with his Armes embroidered upon it.

* See the 1. part of the Institutes, Sect. 1. &c. and in that first part in divers places many things concerning nobility and their creations, and of the gaining and losing thereof, &c. viz. Sect. 9. fo. 17. a. b. Sect. 1. fo. 9 b. Sect. 95. fo. 69. a. b. Sect. 112. f. 83. b. Sect. 241. fo. 165. a. Sect. 14, 15. fo. 20. a. Sect. 137. fo. 9[illegible]. a. Sect. 201. f. 134. a. Sect. 648. fo. 344. a. &c.

land

land were originally derived from the Crowne of England, and are holden of the same mediately or immediately. See before in the Chapter of the high Court of Parliament.

As names make knowne singular persons, so Armes distinguish severall Families.

It is worthy of remembrance, and fit for example, that when Thomas Lord Cromwel by a flattering Herald was offered in the time of King H.8. to fetch his pedegree from the ancient Lord Cromwel, that he might beare his Coat, he answered that he would weare a Coat of his own, lest another mans Coat might be taken from him: unto whom the King as advanced by him gave this Coat, Quarterly indented per Fesse, Or and Azure, four Lions counterchanged: where the old Lord Cromwels Coat was Argent, a Chiefe Gules, a Bend Azure. The said Act of 31 H. 8. extendeth not to Archbishops and Bishops, therefore it is necessary to speak somewhat of them also. In ancient time they had great precedency, even before the brother of the King, as it appeareth by the Parliament Roll of 18 E. 1. and many others, which continued untill it was altered by Ordinance in Parliament in the reigne of King H. 6. as it appeareth by a Roll of Parliament of that Kings reign, entred in the back of the Parliament Roll. The precedency in Parliament, and other places of Counsell at this day (whereunto we ayme) is, the two Archbishops have the precedency of all the Lords Temporall; and every other Bishop in respect of his Barony have place of all the Barons of the Realm, and under the estate of the Viscount and other superior dignities. The Bishops between themselves have this precedency. First, the Bishop of London, and after him the Bishop of Duresme, and then the Bishop of Winchester, and after him every Bishop as he is in seigniority. But to this day, in all Acts, Ordinances, and Judgements, &c. of Parliament it is said, the Lords Spirituall and Temporall.

Rot. Par. 9 Jacobi 8 part. nu. 45. Baronets and others.

The first creation of Baronets was in Anno 9 Jacobi Regis: what place and precedency these Baronets and divers others shall hold, you may read Rot. par. 10 Jacobi Regis part. 10. m. 8. & Rot. par. Anno 14 Jacobi Regis part. 2. m. 24.

To conclude this Chapter with the Code of Theodosius, &c. Ut dignitatum ordo servetur, si quis indebitum sibi locum usurpaverit, nulla se ignoratione defendat, sitque planè sacrilegii reus.

The

The Epilogue.



Hus have we by the great goodneſſe of the Almighty brought this painfull Work, conſiſting of ſuch, and ſo many varieties and difficulties, concerning the Juriſdiction of ſuch, and ſo many diſtinct Courts (above the number of 100.) to a concluſion: and in ſome few caſes, where we have differed from others in opinion, we have ſhewed the cauſe and beginning of theſe errors (as we take them:) for it is a ſure Rule, *Quòd errores ad ſua principia referre, eſt refellere*, to bring errors to their firſt, is to ſee their laſt. Wherein we have ſtrengthened our opinion with our two great guides, Authority and Reaſon, and not truſted Abridgements, Polyanthea's, or taken any thing upon truſt, but have ſearched the Fountaines themſelves, alway holding this Rule, *Quòd ſatius eſt petere fontes, quàm ſectari rivulos*: And our deſired end is, that all theſe high and honourable Tribunals, and other ſubordinate Courts and venerable Seats of Juſtice may proſper and flouriſh in diſtribution of Juſtice, which aſſuredly they ſhall doe, if they derive all their power and ſtrength from their proper roots.

Whileſt we were in hand with theſe foure Parts of the Inſtitutes, we often having occaſion to go into the City, and from thence into the Country, did in ſome ſort envy the ſtate of the honeſt Plowman, and other Mechanicks; for the one when he was at his work would merrily ſing, and the Plowman whiſtle ſome ſelfe-pleaſing tune, and yet their work both proceeded and ſucceeded: But he that takes upon him to write, doth captivate all the faculties and powers both of his minde and body, and muſt be only intentive to that which he collecteth, without any expreſſion of joy or cheerfulneſſe, whileſt he is in his work.

Throughout all this Treatiſe we have dealt cleerly and plainly concerning ſome pretended Courts, which either are no Courts warrantable by Law, as we conceive them, or which without warrant have incroached more juriſdiction then they ought. *Qui non liberè veritatem pronuntiat, proditor veritatis eſt.* Wherein if any of our honourable friends ſhall take offence, our Apology ſhall be, *Amicus Plato, amicus Socrates, ſed magis amica Veritas.* Having ever in memory that ſaying of the Kingly Prophet, *Keepe innocency, and take heed to the thing that is right, and that will bring a man peace at the laſt.* Pſal. 37. 38.

And you honourable and reverend Judges and Juſtices, that do or ſhall ſit in the high Tribunals and Courts or Seats of Juſtice, as aforeſaid, feare not to do right to all, and to deliver your opinions juſtly according to the Laws: for feare is nothing but a betraying of the ſuccours that reaſon ſhould afford. And if you ſhall ſincerely execute juſtice

Lib. Sap. cap. 17. 12. Nihil eſt timor niſi proditio cogitationis auxiliorum.

ſtice, be aſſured of three things: Firſt, though ſome may maligne you, yet God will give you his bleſſing. Secondly, that though thereby you may offend great men and Favourites, yet you ſhall have the favourable kindneſſe of the Almighty, and be his Favourites. And laſtly, that in ſo doing, againſt all ſcandalous complaints and pragmaticall devices againſt you, God will defend you as with a ſhield: * *For thou Lord wilt give a bleſſing unto the righteous, and with thy favourable kindneſſe wilt thou defend him as with a ſhield.*

* Pſal. 5. 13.

And for that we have broken the Ice, and out of our owne induſtry and obſervation framed this high and honourable Building of the Juriſdiction of Courts, without the help or furtherance of any that hath written of this Argument before, I ſhall heartily deſire the wiſe hearted and expert Builders (Juſtice being *Architectonica Virtus*) to amend both the method or uniformity, and the ſtructure it ſelfe, wherein they ſhall finde either want of windowes, or ſufficient lights, or other deficiency in the Architecture whatſoever: And we will conclude with the Aphoriſme of that great Lawyer and Sage of the Law (which we have heard him often ſay) *Bleſſed be the amending hand.*

Ariſtotle.

Edm: Plowden.

Deo gloria & gratia.

FINIS.